

Missouri Commission on Total Compensation



**Final Report on the  
Administrative Law Judges and  
Legal Advisors' Plan**

# Missouri Commission on Total Compensation



Stephen Mahfood  
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Carol Fischer  
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Rep. Amber H. Boykins

Gary Findlay

Sen. Wayne Goode

Rep. B.J. Marsh

Ron Meyer

Norm Robinson

Sen. Larry Rohrbach

Bill Shaw

Karen Touzeau

Ronald Vest

Jacquelyn White

Scott Wiley

March 15, 2002

The Honorable Bob Holden  
Governor  
State Capitol Building, Room 216  
Jefferson City, MO 65101

Dear Governor Holden:

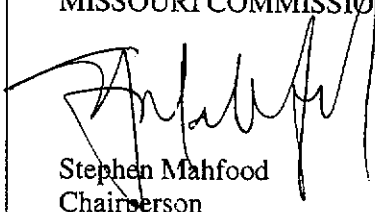
On behalf of the Missouri Commission on Total Compensation (MCTC), I am pleased to present our findings and recommendation pertaining to the future of the Administrative Law Judges and Legal Advisors' Plan.

The MCTC recognized the importance of the charge given to them in Executive Order 01-15 and was mindful of seeking a fiscally responsible solution that would ensure a fair and equitable benefit plan for all state employees.

It is our sincere hope that this recommendation, as well as the other information contained in this report, will be useful to you and the General Assembly in our collective efforts to provide state employees with financial security in an equitable and cost-effective manner.

Sincerely,

MISSOURI COMMISSION ON TOTAL COMPENSATION



Stephen Mahfood  
Chairperson

Enclosure

**MISSOURI COMMISSION ON TOTAL COMPENSATION  
FINAL REPORT ON THE  
ADMINISTRATIVE LAW JUDGE AND LEGAL ADVISORS' PLAN (ALJLAP)**

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The Honorable Bob Holden  
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Dear Governor Holden:

Executive Order 01-15 established the Missouri Commission on Total Compensation and identified specific issues that were to be addressed by the Commission. One of the first issues requiring a Commission recommendation is related to the future of the Administrative Law Judges and Legal Advisors' Plan (ALJLAP). Specifically, the Commission is required to:

"Evaluate the criteria for membership in the Administrative Law Judges and Legal Advisors' Plan to determine whether or not sufficient evidence exists to expand, limit or contract membership in the system in the future and report these findings to the Governor by March 1, 2002."

During the past two months, we have reviewed and analyzed data related to the ALJLAP and the Missouri State Employees' Plan 2000. Furthermore, we conducted a survey to determine whether or not other states treat administrative law judges differently from general employees for purposes of retirement. We have also discussed and reviewed several alternatives to the existing ALJLAP and evaluated whether or not to continue with the current plan design.

Based on this analysis, the Commission unanimously voted at the February 14, 2002, meeting to recommend that the ALJLAP be terminated on a going-forward basis. All current members who presently participate in the ALJLAP would be allowed to remain in the existing plan, however, all new employees hired from the effective date of authorizing legislation, who would have otherwise participated in the ALJLAP, would participate in the Missouri State Employees' Plan 2000.

The primary reasons for this decision were that (a) the Commission felt there was no compelling reason to treat administrative law judge type positions differently from general employee positions for purposes of retirement, and (b) to eliminate the potential risk of litigation from other employees seeking inclusion in the ALJLAP. The Commission continues to support the previously established benefit policy that promotes a retirement structure that provides financial security to all employees in an equitable and cost-effective manner.

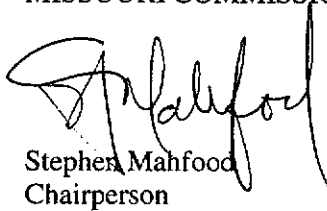
March 15, 2002

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Thank you for providing us with the opportunity to review this issue. In the event you have any questions about the Commission's recommendation or would like to discuss this matter, please let me know.

Sincerely,

MISSOURI COMMISSION ON TOTAL COMPENSATION

A handwritten signature in black ink, appearing to read "Mahfood", is written over the printed name and title.

Stephen Mahfood  
Chairperson

c: Missouri Commission on Total Compensation Members

# **MISSOURI COMMISSION ON TOTAL COMPENSATION FINAL REPORT ON THE ADMINISTRATIVE LAW JUDGES AND LEGAL ADVISORS' PLAN**

## **The Missouri Commission on Total Compensation**

The Missouri Commission on Total Compensation (MCTC) was created under Executive Order 01-15 to ensure that a comprehensive approach to evaluating employee benefits is utilized in assessing the appropriateness of salary and benefit levels for state employees. The MCTC is comprised of fourteen members consisting of one member from the Personal Advisory Board or an appointed designee; three department directors from the Executive Branch of state government appointed by the Governor including the Office of Administration; the executive director of the Missouri Consolidated Health Care Plan; the executive director of the Highway and Transportation Employees' and Highway Patrol Retirement System; the executive director of the Missouri State Employees' Retirement System; one member of the Senate from the majority party and one member of the Senate from the minority party appointed by the President Pro Tem of the Senate; one member of the House of Representatives from the majority party and one member of the minority party appointed by the Speaker of the House; one state retiree appointed by the Governor; and two non-management state employees appointed by the Governor.

The MCTC is charged with the general tasks of issuing recommendations to the Governor on: (a) budget allocations for personnel service resources, including the specific areas of pay plan, retirement, and health care that appropriately balance the total compensation package for state employees; (b) legislative and policy proposals relating to pay and benefit issues that may be introduced; (c) new and more flexible approaches to pay and benefit issues that assist the state in recruiting and retaining highly qualified and productive employees; and (d) training and educational materials for distribution to state employees that illustrate the value of the state's total compensation benefits package. The MCTC also is required to issue a report annually to the Governor and General Assembly regarding its progress in meeting these objectives.

In the executive order that established the MCTC, it was stipulated that one of the first issues requiring a recommendation from the MCTC relates to the future of the Administrative Law Judges and Legal Advisors' Plan (ALJLAP). Specifically, the MCTC is required to evaluate the criteria for membership in the ALJLAP to determine whether or not sufficient evidence exists to expand, limit, or contract membership in the system in the future and report their findings to the Governor.

## **Background**

To provide some background, the State Retirement Advisory Commission (SRAC) was established during the 2000 legislative session. The SRAC was assigned the task of evaluating legislative proposals that would have modified the structure of any benefits provided by retirement plans to ensure that any proposals were consistent with the state's personnel management objective of promoting a benefit structure that provides financial security to state employees in an equitable and cost-effective manner.

One of the the proposals evaluated by the SRAC was HB 2090, legislation that would have transferred regulatory law judges appointed by the Public Service Commission (PSC) from the Missouri State Employees' Plan to the ALJLAP. The SRAC found that benefit disparity exists in the ALJLAP because the membership has grown over the years to include various groups without a clear definition of position characteristics required for membership eligibility in the system.

The SRAC was unable to adequately explore and resolve this issue due to time constraints and the number of other complex legislative retirement proposals they were charged with evaluating that year. However, the SRAC did recommend that a commission be appointed to carefully examine and clarify the criteria for membership in the ALJLAP to promote equity and avoid future litigation. This issue was subsequently delegated to the MCTC under Executive Order 01-15 for consideration and evaluation.

### The Equity Issue

As the result of predecessor bodies to the MCTC, a compensation policy statement has evolved which reads, in part, as follows: "To recruit, retain, and pay employees who provide the highest quality services to the citizens of the state, the state employee benefits structure, combined with appropriate pay, should provide financial security to employees in an *equitable* and cost-effective manner (*emphasis added*)."

This policy statement further specifies certain goals that encourage the state of Missouri to:

- ❑ Create a comprehensive benefits package that is *externally competitive* with the marketplace and that is *internally equitable* (*emphasis added*).
- ❑ Allow *career* state employees to maintain a *reasonable standard of living at retirement* through a combination of *equitable defined benefit*, social security, and individual tax-favored savings plans (*emphasis added*).
- ❑ Eliminate ineffective duplication of benefit plans.

Singling out a select group of employees for special benefits without clearly defining the criteria for such treatment can result in equal protection lawsuits being filed against the state. In recent years, the state has paid out more than \$100 million in benefits as a direct result of equal protection lawsuits that have been filed by various groups of state employees.

The PSC has sought legislation in prior years that would have transferred their regulatory law judges from the Missouri State Employees' Plan to the ALJLAP.

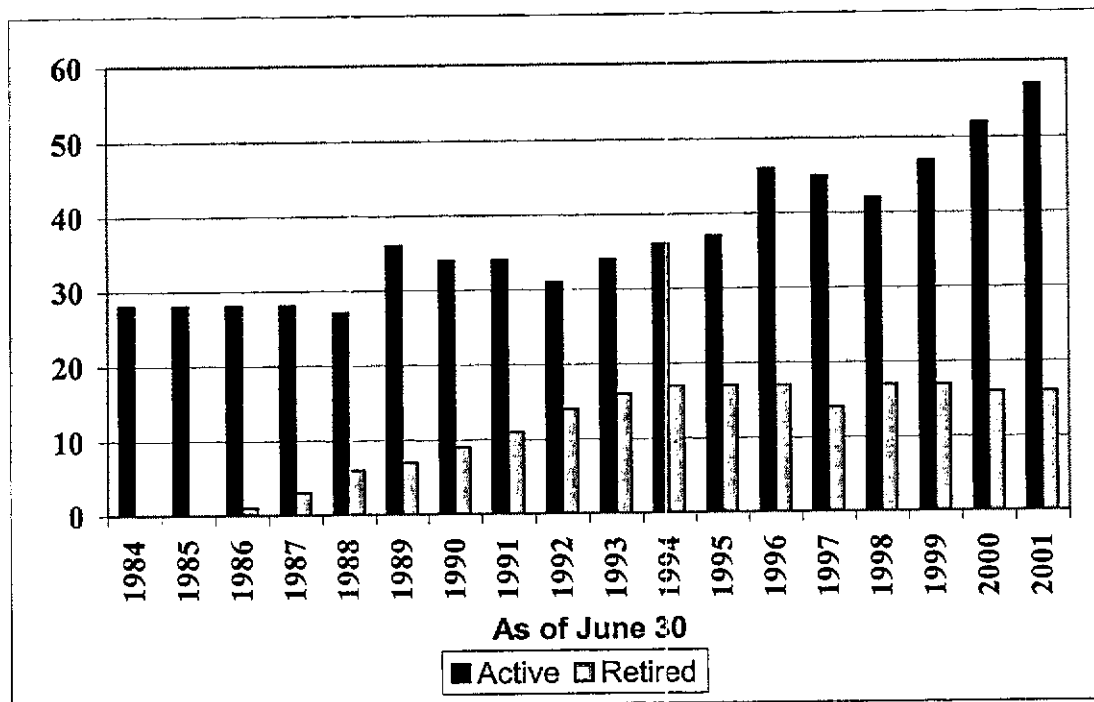
Under that legislation, regulatory law judges would have been covered by the ALJLAP that offers a formula of 4.17% per year, up to 50% with 12 years of service, in lieu of being covered by the closed Missouri State Employees' Plan which offers a 1.5% benefit multiplier; or under the Missouri State Employees' Plan 2000 Plan which offers a 1.7% benefit multiplier and a temporary benefit multiplier of .8% to age 62 (for those retiring under Rule of 80).

Membership in the ALJLAP is currently available to an administrative law judge (ALJ) or legal advisor in the Division of Worker's Compensation, a member or legal counsel of the Labor and Industrial Relations Commission, the Chairman of the State Board of Mediation, or an administrative hearing commissioner.

### History of the ALJLAP

To provide some history, the ALJLAP was created in 1984 and membership was only extended to administrative law judges. In 1987, membership was expanded to include the Labor and Industrial Relations Commission. The Chairman of the State Board of Mediation was added a year later, and in 1994, membership was expanded to include legal counsel for the Division of Labor Standards. In 1997, administrative hearing commissioners were included, and in 1999, membership was expanded to include former administrative hearing commissioners.

The following chart illustrates the growth of the plan since its inception in 1984.



### Lack of Criteria for Membership in the ALJLAP

Benefit disparity exists in the ALJLAP because the membership has grown to include certain groups without the benefit of a clear definition of position characteristics required for eligibility in the system.

As illustrated in the table that follows, the criteria for membership in the ALJLAP appears to be inconsistent and incompatible with the previously stated policy objectives regarding benefit equity.

## STATUTORY JOB REQUIREMENTS

Classification	Definition
Worker's Compensation ALJ	<ul style="list-style-type: none"> <li>➤ Must be a licensed attorney;</li> <li>➤ Has jurisdiction to hear and determine claims upon original hearing; however, no review jurisdiction;</li> <li>➤ May approve settlement contracts; and</li> <li>➤ Must have specialized training.</li> </ul>
Legal Advisors	<ul style="list-style-type: none"> <li>➤ Must be a licensed attorney (not required by statutes, but required by Division);</li> <li>➤ May approve settlement agreements;</li> <li>➤ May have jurisdiction to hear and determine claims upon original hearing;</li> <li>➤ May act in the capacity of associate ALJ; and</li> <li>➤ Must have specialized training.</li> </ul>
Chairman of the Board of Mediation	<ul style="list-style-type: none"> <li>➤ Not required to be a licensed attorney;</li> <li>➤ Supervises the work of the board and has other powers and duties as may be conferred or imposed by the board;</li> <li>➤ Board has power to employ and fix the compensation of conciliators and may issue subpoenas requiring testimony of witnesses;</li> <li>➤ Board must issue a report to Governor after conclusion of hearing outlining the issue, evidence and recommendation; and</li> <li>➤ Cannot promulgate rules.</li> </ul>
Labor and Industrial Relation Commissioners	<ul style="list-style-type: none"> <li>➤ One of the three members must be an attorney;</li> <li>➤ May conduct hearings, and has the authority to rehear and change awards issued by ALJs.</li> </ul>
Attorneys Employed by Labor and Industrial Relations Commission	<ul style="list-style-type: none"> <li>➤ No requirements (this classification presently is eligible for membership in the ALJLAP though a statutory reference stating that the Commission may employ attorneys).</li> </ul>
Administrative Hearing Commissioners	<ul style="list-style-type: none"> <li>➤ Must be a licensed attorney;</li> <li>➤ Conducts administrative hearings, makes findings of fact and conclusions of law that are final for purposes of judicial review; and</li> <li>➤ May approve settlement agreements.</li> </ul>

To illustrate the disparity in job descriptions, administrative law judges in the Division of Worker's Compensation have the authority to hear and determine claims upon original hearing; however, their decisions are not final for purposes of judicial review. The final authority for disposition of an administrative law judge's case rests with the Labor and Industrial Relations Commission. The Labor and Industrial Relations Commission, in turn, may approve the decision, rehear the matter, or change an award. Conversely, administrative hearing commissioners make findings of fact and conclusions of law that are final for purposes of judicial review.

The Chairman of the Board of Mediation may conduct hearings; however, at the close of a hearing the board is required to submit a written report to the Governor that describes the controversy and includes a resume of evidence and a recommendation for disposition.

Attorneys employed by the Labor and Industrial Relations have no job requirements set forth in statute, but participate in the ALJLAP by a reference to Chapter 286 that allows the Labor and Industrial Relations Commission to employ attorneys.

The common denominator appears to be that most of the employees holding these positions have some type of authority to preside over hearings.

### **The Have and Have Nots**

Given the lack of defined criteria for membership in the ALJLAP, other groups of employees (such as regulatory law judges employed by the PSC) serving in somewhat similar positions have sought legislative support for adding additional classifications to the system.

Without a clear definition, it is likely that additional piecemeal solutions will be pursued legislatively (resulting in more disparity), and the state could be exposed to equal protection lawsuits from other groups of employees who consider themselves similarly situated. A sampling of these groups might include administrative law judges employed by the Division of Motor Carrier and Railroad Safety and hearing officers employed by the Department of Insurance, the Department of Natural Resources, the Department of Health, the Department of Mental Health, the Missouri Commission on Human Rights, the Department of Revenue, the Department of Social Services, the Missouri Gaming Commission, the Department of Agriculture, the State Tax Commission, the Highway and Transportation Commission, the Personnel Advisory Board, the Division of Employment Security, the Department of Public Safety, etc. A further complication is that many of the employees who act as hearing officers for these agencies only do so on a part-time basis – the balance of their time is spent on duties not related to hearings.

### **PSC Testimony**

The MCTC heard testimony from representatives of the PSC regarding the complexity of duties associated with the regulatory law judge position and the high turnover rate experienced in that department. The PSC believes that expanding membership in the ALJLAP to include regulatory law judges will help to provide some immediate relief from the exodus of experienced regulatory law judges who are leaving state government to go to the private sector, thus, mitigating their retention problem.

### **Questions That Must Be Answered**

Given the absence of defined criteria for membership in the ALJLAP, the lack of a rational basis supporting a separate retirement plan such as the ALJLAP, and the number of positions not presently eligible but similar in nature to the positions now covered by the ALJLAP, the MCTC was faced with the following key questions related to expanding, limiting, or contracting the plan:

- Does sufficient rationale exist for having a separate ALJLAP retirement plan?
- If the answer is yes, what criteria should be used to define eligibility for membership? (What positions or classifications should be eligible for membership?)
- If the answer is no, why continue with the existing plan design?
- Further, is the retention issue facing the PSC any different than that facing other state agencies in a highly competitive labor market?

### **Survey Results**

A survey was also distributed through the National Association of State Retirement Administrators to 50 participating states to determine whether or not other states treat administrative law judges differently from general employees for purposes of retirement. Of the 26 states responding to the survey, 24 do not offer separate retirement benefits for administrative law judges and none offer separate retirement benefits for hearing examiners. The only two states offering separate retirement benefits for administrative law judges are Missouri and Delaware. (See survey results attached to this report.)

### **ALJLAP Statistical Data**

The MCTC reviewed statistical information pertaining to the growth of the ALJLAP, the average entry age, retirement age, monthly benefit, and years of service. The tables that follow illustrate the active and retired data for the ALJLAP as compared to that of general employees under the Missouri State Employees' Plan (MSEP) and Missouri State Employees' Plan 2000 (MSEP 2000).

ACTIVE MEMBERS FY 2001		
	ALJLAP	MSEP
Avg. Entry Age	40	32
Avg. Age	48	42.7
Avg. Salary	\$81,932	\$29,471
Avg. Years of Service	8.8	9.6

The PSC reported that the average entry age for regulatory law judges is 39, the average salary is \$57,605, and the average years of service is 4 years.

RETIRED MEMBERS - ALJLAP		
	FY 2001*	1996-2000
Avg. Entry Age	48	51
Avg. Retirement Age	55	63
Avg. Monthly Benefit	\$2,982	\$2,813
Avg. Years of Service	21.7	20.4
Avg. Pay at Retire.	\$71,568	\$67,512

\*Only one member retired in FY 2001; therefore, statistics for the previous 5-year period have also been illustrated.

RETIRED MEMBERS FY 2001		
	MSEP	MSEP 2000
Avg. Entry Age	39	30.9
Avg. Retirement Age	62.9	57.1
Avg. Monthly Benefit	\$824	\$1,538*
Avg. Years of Service	20.4	24.6
Avg. FAP	\$28,440	\$30,108

\*MSEP 2000 primarily reflects long service employees who receive a temporary benefit.

### Plan Comparison

The MCTC also evaluated the different benefit structures that are available to employees in the ALJLAP and the MSEP 2000. The table that follows provides a brief comparison of the benefits that are available under the ALJLAP and MSEP 2000.

PLAN COMPARISON		
	ALJLAP	MSEP 2000
Normal Retirement Eligibility	Age 62 with 12 years of service; or age 60 with 15 years of service; or age 55 with 20 years of service.	Age 62 with 5 years of service; or Rule of 80 -- minimum age 50.
Early Retirement Eligibility	Age 65 with less than 12 years of service with a reduced benefit based upon years of service relative to 12 years.	Age 57 with 5 years of service.
Benefit Formula	For 12 or more years of service equivalent to 50% of the average highest 12 consecutive months of salary.	Life Benefit: equivalent to 1.7% x FAP x service. Temporary Benefit: 0.8% x FAP x service (until age 62 and only if retiring under Rule of 80).
Vesting	Immediate	5 years of service
Post-Retirement COLA	If hired before August 28, 1997, annual COLA is equal to 80% of the change in the CPI with a minimum of 4% and maximum of 5% until reaching 65% cap. Thereafter, the COLA is based on 80% of the change in the CPI with a maximum rate of 5%.  If hired on or after August 27, 1997, annual COLA is equal to 80% of the change in the CPI with a maximum rate of 5%.	Annual COLA is equal to 80% of the change in the CPI with a maximum rate of 5%.
Survivor Benefit (Death Before Retirement)	Survivor benefit to eligible spouse equal to 50% of the benefit the member would have received.	<u>Non-duty-related death.</u> Survivor benefit calculated using Joint & 100% survivor option or 80% of the member's life income annuity paid to eligible children. <u>Duty-related death.</u> Survivor benefit to eligible spouse or children equal to a minimum annuity of 50% of final average pay (no service requirement).
Survivor Benefit (Death After Retirement)	Survivor benefit to eligible spouse equal to 50% of the member's annuity at time of death.	Survivor benefit to eligible spouse based on option elected at retirement. Choice of: Life Income Annuity Joint & 50% Survivor Joint & 100% Survivor 120 or 180 Guaranteed Payments

The MCTC also evaluated what an ALJLAP benefit would be under the MSEP 2000. The tables that follow illustrate the difference in benefits payable based on entry ages of 30, 40, and 50 and a pay level of \$6,800 per month.

Entry Age                      30                      Monthly  
Salary Used:      \$6,800

		ALJ Plan Benefit	
Service	Age at Retirement	Amount	% of Pay
25	55	\$3,400	50%
26	56	\$3,400	50%
27	57	\$3,400	50%
28	58	\$3,400	50%
29	59	\$3,400	50%
30	60	\$3,400	50%
31	61	\$3,400	50%
32	62	\$3,400	50%
33	63	\$3,400	50%
34	64	\$3,400	50%
35	65	\$3,400	50%

MSEP 2000 Plan Benefit			
Amount to age 62	% of pay to age 62	Amount at age 62	% of pay at age 62
\$4,250	63%	\$2,890	43%
\$4,420	65%	\$3,006	44%
\$4,590	68%	\$3,121	46%
\$4,760	70%	\$3,237	48%
\$4,930	73%	\$3,352	49%
\$5,100	75%	\$3,468	51%
\$5,270	78%	\$3,584	53%
		\$3,699	54%
		\$3,815	56%
		\$3,930	58%
		\$4,046	60%

Entry Age                      40                      Monthly  
Salary Used:      \$6,800

		ALJ Plan Benefit	
Service	Age at Retirement	Amount	% of Pay
15	55	N/A	N/A
16	56	N/A	N/A
17	57	N/A	N/A
18	58	N/A	N/A
19	59	N/A	N/A
20	60	\$3,400	50%
21	61	\$3,400	50%
22	62	\$3,400	50%
23	63	\$3,400	50%
24	64	\$3,400	50%
25	65	\$3,400	50%

MSEP 2000 Plan Benefit			
Amount to age 62	% of pay to age 62	Amount at age 62	% of pay at age 62
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A
\$3,400	50%	\$2,312	34%
\$3,570	53%	\$2,428	36%
		\$2,543	37%
		\$2,659	39%
		\$2,774	41%
		\$2,890	43%

Entry Age		50		Monthly Salary Used:		\$6,800	
		ALJ Plan Benefit		MSEP 2000 Plan Benefit			
Service	Age at Retirement	Amount	% of Pay	Amount to age 62	% of pay to age 62	Amount at age 62	% of pay at age 62
5	55	N/A	N/A	N/A	N/A	N/A	N/A
6	56	N/A	N/A	N/A	N/A	N/A	N/A
7	57	N/A	N/A	N/A	N/A	N/A	N/A
8	58	N/A	N/A	N/A	N/A	N/A	N/A
9	59	N/A	N/A	N/A	N/A	N/A	N/A
10	60	N/A	N/A	N/A	N/A	N/A	N/A
11	61	N/A	N/A	N/A	N/A	N/A	N/A
12	62	N/A	N/A			\$1,387	20%
13	63	N/A	N/A			\$1,503	22%
14	64	N/A	N/A			\$1,618	24%
15	65	\$3,400	50%			\$1,734	26%

As illustrated in the previous tables, the value of an ALJLAP benefit is greater than the amount that would be paid under the MSEP 2000 in most cases.

### Alternatives to the Existing Plan

The MCTC also reviewed several plan alternatives to the existing ALJLAP, along with an accompanying rationale supporting the reasoning for continuing with a separate retirement plan for administrative law judges.

In attempting to determine a rationale that supports the existence of a separate retirement structure for administrative law judges type positions which is different from that available to other state employees, consideration was given to attracting experienced, licensed attorneys at mid-career and retaining a competent judicial workforce for a 15-20 year period. This management objective differs from that which was incorporated into the MSEP 2000 that focused on attracting younger employees early in their careers, and then training, promoting, and retaining those employees for an average of 30 years.

After reviewing the various classifications and commission structures that exist within the ALJLAP, it was determined that the most pertinent distinction lies in the final authority for disposition of administrative cases. As stated previously, administrative hearing commissioners make findings of fact and conclusions of law that *are final* for purposes of judicial review. However, administrative law judges differ in that they make findings of fact and conclusions of law that *may be final* or may be appealed to the Labor and Industrial Relations Commission. In this situation, final authority for disposition of cases rests with the Labor and Industrial Relations Commission. This structure also exists with the PSC and their regulatory law judges, as well as in other areas of state government.

Several of the plan alternatives focused on this distinction in addition to establishing new criteria for membership that requires participants to be licensed attorneys whose job duties exist by statute, and whose primary job function is the disposition of administrative cases. Under these

alternatives, all current members of the ALJLAP would remain in the existing plan; however, all new employees hired after the effective date who meet the established criteria would participate in a new administrative judicial plan.

In evaluating the plan alternatives that follow, the MCTC also reviewed the statutes for administrative law judge and commission type structures that may be similar to those currently in the ALJLAP and, for discussion, a few of those groups were included in several of the plan alternatives. In this review, the MCTC attempted to examine similar structures that exist within state government to provide additional information that would enable the MCTC to move towards the objective of maintaining benefit equity.

## PLAN ALTERNATIVES

### ALTERNATIVE #1 Establish Eligibility Criteria

#### New Requirements for Membership

1. Must be a *licensed attorney* in the state of Missouri.
2. Job duties must *exist by statute*.
3. Must be employed in a *full-time position* where the *primary* job duties include:
  - a) Conducting adjudicative hearings where witnesses are heard and evidence is presented.
  - b) Administering oaths, taking testimony, ruling on questions of evidence, regulating course of proceedings, and *making findings of fact and conclusions of law that may be final for purposes of judicial review*.
  - c) Taking an oath to support the Missouri and U.S. Constitutions, and to faithfully and honestly discharge the duties of the office.

Note: Under Alternative #1, all current members of the ALJLAP would remain in the existing plan. All new employees hired after the effective date would participate in a new administrative judicial plan.

Under Alternative #1, the new eligibility requirements state that a member must be a licensed attorney whose job duties exist by statute. The MCTC felt these were important distinctions since administrative law judges are required to be licensed attorneys and, through the statutes, the General Assembly has recognized the specific authority given to each of these classifications. The requirements further necessitate being employed as an administrative law judge in a full-time capacity with the ability to make findings of fact and conclusions of law that *may be final* for purposes of judicial review.

The existing classifications that would appear to be eligible for membership in a proposed administrative judicial retirement plan under this alternative would include administrative hearing commissioners, administrative law judges under the Division of Workers' Compensation, Labor and Industrial Relations Commissioners (one is required to be an attorney), associate administrative law judges and legal advisors under the Division of Workers' Compensation. (Although legal advisors are not required to be licensed attorneys by statute, this classification has the statutory authority to act as an associate administrative law judge in certain instances. The

Division has also confirmed that it requires legal advisors to have completed law school and be admitted to the Missouri Bar -- thus, this classification was included under Alternative #1.)

Additionally, new classifications that might be eligible for membership provided the new requirements are met include Public Service Commissioners (but not PSC regulatory law judges as their job descriptions do not exist by statute), tax commissioners and tax commission hearing officers, administrative law judges under the Division of Motor Carrier and Railroad Safety, and possibly other boards with hearing officers (an example would be hearing officers employed by the Personnel Advisory Board).

Previously included classifications that would no longer participate in an administrative judicial retirement plan under this alternative include Labor and Industrial Relations Commissioners who do not meet the new eligibility criteria, the Chairman of the Board of Mediation, and attorneys employed by the Labor and Industrial Relations Commission.

In summarizing Alternative #1, although several classifications would be eliminated from participating in a future plan, membership could be expanded to include other classifications that presently do not participate in the ALJLAP. The MCTC had serious concerns regarding the potential for increased funding costs associated with expanding plan membership in the current economic environment. Further complicating this issue is that one Labor and Industrial Relations Commissioner could be eligible to participate, yet the remaining two commissioners might be unable to because of the requirement to be a licensed attorney (by statutes only one commissioner is required to be an attorney). This could likely result in a future statutory change either eliminating the attorney requirement for commissioners or requiring all three commissioners to be attorneys. It is also likely that the PSC regulatory law judges would seek legislation in the future that would provide a statutory job definition so they could be afforded membership in a proposed administrative judicial retirement plan.

## ALTERNATIVE #2 Establish Eligibility Criteria

### New Requirements for Membership

1. Must be a *licensed attorney* in the state of Missouri.
2. Job duties must *exist by statute*.
3. Must be employed in a *full-time position* where the *primary* job duties include:
  - a) Conducting adjudicative hearings where witnesses are heard and evidence is presented.
  - b) Administering oaths, taking testimony, ruling on questions of evidence, regulating course of proceedings, and *making findings of fact and conclusions of law that are final for purposes of judicial review*.
  - c) Taking an oath to support the Missouri and U.S. Constitutions, and to faithfully and honestly discharge the duties of the office.

Note: Under Alternative #2, all current members of the ALJLAP would remain in the existing plan. All new employees hired after the effective date would participate in a new administrative judicial plan.

Under Alternative #2, the requirements for eligibility in a proposed administrative judicial retirement plan would be nearly the same as Alternative #1; however, an administrative law judge would be required to render decisions that *are final* for purposes of judicial review. Under this alternative, the existing classifications that would remain eligible for membership would include administrative hearing commissioners and Labor and Industrial Relations Commissioners (one is required to be an attorney).

New classifications that might be eligible for membership, provided the eligibility criteria is met, could include Public Service Commissioners and Tax Commissioners.

Previously included classifications in the ALJLAP that have been eliminated from participating in this proposed administrative judicial plan would include the Chairman of the Board of Mediation, administrative law judges, associate administrative law judges and legal advisors under the Division of Workers' Compensation, Labor and Industrial Relations Commissioners (who do not meet the criteria), and lawyers employed by the Labor and Industrial Relations Commission.

In summarizing Alternative #2, although a number of classifications have been eliminated, Public Service Commissioners and Tax Commissioners – two classifications that presently do not participate in the existing ALJLAP, could potentially be added provided these positions meet the new eligibility requirements. Also, one Labor and Industrial Relations Commissioner could be eligible to participate, yet the remaining two commissioners might be unable to because of the requirement to be a licensed attorney (again, by statutes only one commissioner is required to be an attorney). This would likely result in either a future statutory change eliminating the attorney requirement for commissioners or requiring all commissioners to be attorneys. Lastly, if the Public Service Commissioners and Tax Commissioners did not meet the criteria, the potential would exist for the state to fund a separate retirement plan for four individual positions (three administrative hearing commissioners, and one Labor and Industrial Relations Commissioner).

### ALTERNATIVE #3

#### Create a New and Expanded Centralized Panel of Administrative Law Judges

##### New Requirements for Membership

1. Must be a *licensed attorney* in the state of Missouri.
2. Job duties must *exist by statute*.
3. Must be employed in a *full-time position* where the *primary* job duties include:
  - a) Conducting adjudicative hearings where witnesses are heard and evidence is presented.
  - b) Administering oaths, taking testimony, ruling on questions of evidence, regulating course of proceedings, and *making findings of fact and conclusions of law that are final for purposes of judicial review*.
  - c) Taking an oath to support the Missouri and U.S. Constitutions, and to faithfully and honestly discharge the duties of the office.

Note: Under Alternative #3, all current members of the ALJLAP would remain in the existing plan. All new employees hired after the effective date would participate in a new administrative judicial plan.

Under Alternative #3, the new requirements for membership are identical to Alternative #2; however, a new centralized panel of administrative law judges would be created. Under this

alternative, any administrative law judge appointed to the panel would be eligible to participate in a proposed administrative judicial retirement plan.

This central panel could be structured in numerous ways. For instance, the size of the Administrative Hearing Commission could be expanded from its present staffing of three commissioners. Another option would be to create specialty areas on the panel wherein certain administrative law judges with expertise in specific areas, such as worker's compensation or tax issues, would only hear those type of cases in lieu of the present structure of administrative hearing commissioners who act as generalists and render decisions in many areas.

While this concept has some ideological merit, the MCTC believes that it may be difficult to reach a consensus between the various groups that would be involved regarding how a central panel should be structured.

<p style="text-align: center;"><b>ALTERNATIVE #4</b> <b>Terminate the ALJLAP</b></p>
<p>All current members would remain in the ALJLAP. All new members hired on or after the effective date would participate in the MSEP 2000.</p>

Under Alternative #4, the ALJLAP would be terminated on a going-forward basis. All current members who presently participate in the ALJLAP would be allowed to remain in the existing plan; however, all new employees hired from the effective date of authorizing legislation, who would have otherwise participated in the ALJLAP, would participate in the MSEP 2000. This alternative would treat all future administrative law judge type positions no differently from general employee positions for purposes of retirement.

<p style="text-align: center;"><b>ALTERNATIVE #5</b> <b>Do Nothing</b></p>
<p>Leave the existing plan design alone. Only current classifications would be eligible to participate in the ALJLAP.</p>

Under Alternative #5, only the current classifications that presently participate would be afforded future membership in the ALJLAP. This alternative is the most problematic of all of the options that were evaluated since it does not define any eligibility criteria for membership. The lack of a definition will most likely result in similar classifications of employees seeking legislation that would afford them membership in the ALJLAP and will result in even more benefit disparity. Further, in not defining the criteria for membership, the state has done nothing to mitigate its risk for potential litigation in the future.

Alternatives #1, #2, #3 and #5 assume that a rationale exists which supports having a different retirement structure for administrative law judge type positions. Conversely, Alternative #4 assumes that there is no rationale that supports treating administrative law judge type positions differently from general employee positions for purposes of retirement.

### **Conclusion**

The MCTC reviewed and analyzed data related to the ALJLAP, the MSEP 2000, information submitted by the PSC pertaining to regulatory law judges, survey results regarding the way in which other states treat administrative law judges for purposes of retirement, and several alternatives to the existing ALJLAP plan design. Based on that review and analysis, the MCTC determined that there was no compelling reason for treating administrative law judge type positions differently from general employee positions for purposes of retirement.

Furthermore, the MCTC expressed concern that the existence of the ALJLAP subjects the state to exposure to equal protection litigation from other employees seeking inclusion in the ALJLAP. Consequently, the MCTC voted unanimously to recommend that the ALJLAP be terminated on a going-forward basis. All current participants in the ALJLAP would be allowed to remain in the existing plan; however, all new employees hired from the effective date of authorizing legislation, who would have otherwise participated in the ALJLAP, would participate in the MSEP 2000.

The MCTC believes that the retention issue facing the PSC is best resolved through the state maintaining a comprehensive salary and benefits package that is externally competitive with the marketplace while being internally equitable.

The MCTC continues to support the previously established benefit policy that promotes a retirement benefit structure that provides financial security to all employees in an equitable and cost-effective manner.

## Administrative Law Judge Survey Summary Highlights

- The Administrative Law Judge Survey was distributed through the National Association of State Retirement Administrators to 50 participating states.
- For purposes of this survey, an administrative law judge was defined as a licensed lawyer, appointed by an executive branch agency, who cannot practice law while holding office. An administrative law judge has the jurisdiction to hear and determine administrative claims upon original hearing and may approve settlement contracts. Administrative law judges are not judges under the judicial branch.
- The Administrative Law Judge Survey experienced a 52% participation rate (26 surveys were received).
- 92.3% of the respondents (24 states) do not offer separate retirement benefits for administrative law judges.
- 7.7% of the respondents (2 states) do offer separate retirement benefits for administrative law judges. These states include:
  - Delaware – offers a retirement benefit formula that is 4.166% of final average compensation multiplied by years of service up to 12 years, plus 2.08% of final average compensation multiplied by years of service from 13 to 24 years.
  - Missouri – offers a retirement benefit formula that is equivalent to 50% of the average highest 12 consecutive months of salary for 12 or more years of service.
- 100% of the respondents (26 states) do not offer separate retirement benefits for hearing examiners.

## Administrative Law Judge Survey

### Arkansas PERS

Gail H. Stone

501-682-7854

E-mail: [gail.stone@mail.state.ar.us](mailto:gail.stone@mail.state.ar.us)

Fax: 501-682-7825

#### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

#### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

#### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

### California Public Employees' Retirement System

Barbara Hegdal

916-326-3822

E-mail: barbara\_hegdal@calpers.ca.gov

Fax: 916-341-2761

#### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

#### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

#### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

### Colorado PERA

Meredith Williams

303-863-3883

E-mail: mwilliams@copera.org

Fax: 303-863-3811

#### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

#### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

#### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

Delaware  
Dave Craik  
(302) 739-4208  
E-mail: dcraik@state.de.us  
Fax: (302) 739-6129

### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

Yes

If yes, please describe the retirement benefit formula.

**4.166% of final average compensation multiplied by service up to 12 years, plus 2.08% of final average compensation multiplied by years of service from 13 to 24 years.**

### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

**Dave Craik (302) 739-4208**

## Administrative Law Judge Survey

### Employees' Retirement System of Georgia

Cecelia Corbin Hunter, Director

404-352-6412

E-mail: cchunter@ers.state.ga.us

#### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

#### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

#### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

### State Retirement Systems of Illinois

Rudy J. Kink, Jr.

217/785-6965

E-mail: rkink@ser084r1.state.il.us

Fax: 217/785-7019

#### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

#### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

#### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

### Indiana Public Employees' Retirement Fund

William Butler

317/233-4133

E-mail: wbutler@perf.state.in.us

Fax: 317/233-1765

#### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

#### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

#### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

### **Iowa Public Employees' Retirement System**

Gregg Schochenmaier

515-281-0054

E-mail: gregg.schochenmaier@idop.state.ia.us

Fax: 515-281-0045

#### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

#### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

#### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

### **Kansas Public Employees Retirement System**

Glenn Deck

785-296-1019

E-mail: gdeck@kpers.org

Fax: 785-296-2422

#### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

#### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

#### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

### Maine State Retirement System

Kay Evans

207-666-3927

E-mail: [kevans@msrs.org](mailto:kevans@msrs.org)

Fax: 207-287-3451

#### Question 1:

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

#### Question 2:

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

#### Question 3:

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

### Michigan Office of Retirement Services

William SaintAmour

517-322-6113

E-mail: stamourw@state.mi.us

Fax: 517-322-6145

#### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

#### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

#### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

### **PERS of Mississippi**

Frank Ready

601-359-2241

E-mail: [brenda\\_pierce@pers.state.ms.us](mailto:brenda_pierce@pers.state.ms.us)

Fax: 601-359-2285

### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

### **Missouri State Employees' Retirement System**

Judy Delaney

573-632-6113

E-mail: judyd@mosers.org

Fax: 573-632-6101

#### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

**Yes**

If yes, please describe the retirement benefit formula.

**50% of the average highest 12 consecutive months of salary for 12 or more years of service.**

#### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

**No**

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

#### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

**Judy Delaney 573-632-6113**

## Administrative Law Judge Survey

### **PERS of Nevada**

George Pyne

775-687-4200

E-mail: GPYNE@NVPERS.ORG

Fax: 775-687-5131

#### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

#### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

#### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

### New Mexico Public Employees Retirement

Terry Slattery

505-827-4702

E-mail: [tislattery@pera.state.nm.us](mailto:tislattery@pera.state.nm.us)

Fax: 505-476-0163

#### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

#### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

#### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

### New York State and Local Retirement Systems

George S. King, Counsel

518-474-3592

GKing@osc.state.ny.us

518-486-3106

#### Question 1:

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

#### Question 2:

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

#### Question 3:

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

**North Dakota PERS**  
Sparb Collins  
701-328-3900  
E-mail: [scollins@state.nd.us](mailto:scollins@state.nd.us)  
Fax: 701-328-3920

**Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

**No**

If yes, please describe the retirement benefit formula.

**Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

**No**

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

**Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

### **Ohio PERS**

ddrake

614-466-2433

E-mail: ddrake@opers.org

Fax: 614-466-5837

### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

### Oklahoma Public Employees Retirement System

Steve Edmonds

405-858-6737

E-mail: sedmonds@oklaosf.state.ok.us

Fax: 405-848-5967

#### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

#### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

#### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

### **Oregon Public Employees Retirement System**

Steve Delaney - Government Relations

503-603-7694

E-mail: [steve.j.delaney@state.or.us](mailto:steve.j.delaney@state.or.us)

Fax: 503-598-1218

#### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

#### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

#### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

### South Carolina Retirement Systems

Stephen R. Van Camp

(803) 737-6898

E-mail: svancamp@scrs.state.sc.us

Fax: (803) 737-7746

#### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

**No. ALJ's participate in the same retirement system as other state employees. Judges in the judicial department have their own system.**

If yes, please describe the retirement benefit formula.

#### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

**No**

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

#### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

### **Employees Retirement System of Texas**

Sheila Beckett

512/867-7174

E-mail: sbeckett@ers.state.tx.us

Fax: 512/867-7334

#### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

#### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

#### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

### **Vermont State Retirement System**

Cynthia L. Webster, Director

802-828-2302

E-mail: cwebster@tre.state.vt.us

Fax: 802-828-5182

#### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

#### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

#### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

### Virginia Retirement System

Bo Harris

804-344-3121

E-mail: [wharris@vrs.state.va.us](mailto:wharris@vrs.state.va.us)

Fax: 804-786-1541

#### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

#### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

#### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

### Dept. of Retirement Systems - State of Washington

Steve Nelsen

360-664-7308

E-mail: [steven@drs.wa.gov](mailto:steven@drs.wa.gov)

Fax: 360-753-3166

#### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

#### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

#### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.

## Administrative Law Judge Survey

### **WV Consolidated**

Betty S. Ireland

304-558-3570

E-mail: bireland@wvretirement.com

Fax: 304-558-6337

### **Question 1:**

Do you have a separate retirement benefit structure for administrative law judges?

No

If yes, please describe the retirement benefit formula.

### **Question 2:**

Do you have a separate retirement benefit structure for hearing examiners?

No

If yes, please describe the retirement benefit formula and the duties of hearing officers if they are different than the duties of administrative law judges.

### **Question 3:**

If you answered yes to any of the above questions, please provide the name and phone number of a person that we may contact for more information.



Commissioners  
KELVIN L. SIMMONS  
Chair  
CONNIE MURRAY  
SHEILA LUMPE  
STEVE GAW  
BRYAN FORBIS

## Missouri Public Service Commission

POST OFFICE BOX 360  
JEFFERSON CITY, MISSOURI 65102  
573-751-3234  
573-751-1847 (Fax Number)  
<http://www.psc.state.mo.us>

ROBERT J. QUINN, JR.  
Executive Director  
WESS A. HENDERSON  
Director, Utility Operations  
ROBERT SCHALLENBERG  
Director, Utility Services  
DONNA M. PRENGER  
Director, Administration  
DALE HARDY ROBERTS  
Secretary/Chief Regulatory Law Judge  
DANA K. JOYCE  
General Counsel

February 13, 2002

Chairman Mafood and Members of the Total Compensation Commission:

You indicated that the Commission members would welcome additional pertinent information regarding the PSC's position on RLJ inclusions in the Administrative Law Judges and Legal Advisors Plan (ALJALP). Recent developments, I believe, warrant this late submission. Three of the ten key positions in the PSC's Adjudication Division are unexpectedly vacant as shown below. I shall detail them separately, but briefly:

Judge #1. This judge resigned effective February 22<sup>nd</sup>, 2002. He is going to another state agency for a pay increase of slightly less than 40%.

Judge #2. This judge resigned, effective April 1<sup>st</sup>, 2002. We do not know where she is going. PSC employees are prohibited by statute from pursuing employment within the industry while still employed by the Commission. They must leave before finding and accepting a new position.

Law Clerk: This is a judge's FTE which was converted to a law clerk position in an effort to provide centralized, consistent and critical legal research for the judges and Commissioners without having to delay an ongoing case while the presiding judge performed that work. It has also been a cost savings. The law clerk resigned effective January 1<sup>st</sup>, 2002, to take a position with another state agency. She left for a pay increase of 40%.

The Commission not only faces the cost of training three new attorneys in the discipline of utility regulation but faces the hidden costs of turnover as well. For example, the cost to run a one-day advertisement for the law clerk position was \$5,280. The cost to run a two-day ad for a new judge was \$14,860. As a Division Director, I have a fiduciary duty to be a good steward of the utility industry's funds. If it were within my authority, I would feel more fiscally conservative if I could pay to retain rather than to retrain.

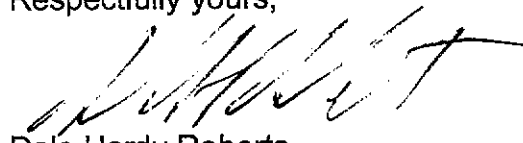
Once the Commission advertises, interviews, investigates and selects a new attorney, the training begins. Delays for our cases and lost productivity are hard to measure. However, our actual training costs are both known and measurable. For example, the Commission's costs to train the law clerk during her first six months were \$2,785. The Commission's training costs for Judge #1 were \$11,288 during the two and one-half years he was here. The training costs for Judge #2 were \$13,344 during the three years she was here.

According to the fiscal note prepared for this proposal in February, 2000, the cost to include the PSC judges in the ALJALP would have been, roughly, \$37,000 the first year and \$44,000 every year thereafter. As you can see, the Commission will be spending \$47,000 this month alone on turnover<sup>1</sup>. I have attached the documentation which will not only support this information, but I believe it will also provide you with a better understanding of the demands of a utility judge's position. I have also attached the fiscal note from which I cite.

During her tenure as Chair, Commissioner Lumpe looked at the lack of turnover in agencies which have the ALJALP and recognized the ongoing value of that plan. Commissioner Lumpe continues to support including the Commission's judges in the ALJALP.

Lastly, I would ask that if the Committee determines it appropriate to discontinue the ALJALP, that such a move be approached prospectively so that our request and effort to bring this disparity to your attention not be penalized. Thank you, again, for your consideration.

Respectfully yours,



Dale Hardy Roberts  
Chief Law Judge/Secretary of the Commission

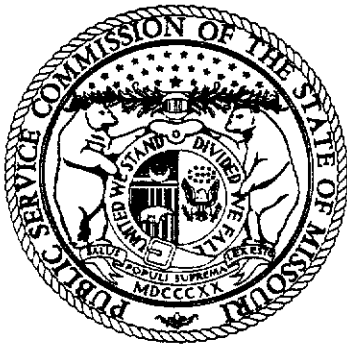
DHR:dlp

cc: Commissioner Sheila Lumpe

Attachments

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<sup>1</sup> In sum: the Commission has just incurred:  
Lost training costs: \$27,000, and  
Advertising costs: \$20,140.



## **MISSOURI PUBLIC SERVICE COMMISSION**

### **JOB OPPORTUNITY**

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#### **ATTORNEY / REGULATORY LAW JUDGE**

The Missouri Public Service Commission is seeking an attorney for the position of Regulatory Law Judge. This is a quasi-judicial position which requires the ability to preside over adversarial hearings which may last several weeks on the record and include at least three parties as well as ten or more interveners. The amount in controversy in these cases is often in the millions of dollars. These cases involve complex economic, engineering, and accounting issues.

In addition to presiding over complex litigation, the successful candidate will independently control a docket of cases from the Telecommunications, Electric, Gas, Water and Sewer industries and review extensive pleadings, written expert testimony, briefs, and other case-related documents in the preparation of final Commission orders. The judge must work effectively within a panel of eight other judges and for a five-member Commission. This requires the ability to provide sound legal analysis and well-drafted documents under demanding deadlines.

The ideal candidate for this position would have undergraduate study or work experience in engineering, economics or finance. Experience in administrative law, regulatory law or government practice is also preferred. The applicant must be a member of the Missouri Bar, demonstrate excellent reasoning and writing skills and possess strong computer skills.

Starting salary commensurate with experience, with a possible increase after six months, and a package of state employee benefits. This is a rewarding opportunity for a professional who enjoys constant personal growth and a unique experience in a rapidly developing industry with a dedicated, diverse, hard-working but personable and friendly panel of fellow judges.

To be considered for this position, submit each of the following documents: (1) resume, (2) transcripts, (3) legal writing samples, (4) salary requirements and (5) employment references. Please send to: Human Resources Manager, Missouri Public Service Commission, P.O. Box 360, Jefferson City, MO 65102, by **March 1, 2002**. Applications received after that date may be considered if the position is not yet filled. For additional information about the Public Service Commission, please visit <http://www.psc.state.mo.us/>.

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These are the basic National Judicial College courses required for the PSC judges. These are waived if we find applicants with judicial experience.

#### ADMINISTRATIVE LAW: FAIR HEARING

Tuition: \$1,295    Conference Fee: \$330<sup>1</sup>

This course offers specialized training for administrative law adjudicators, whether federal or state, who are looking for a foundational course in administrative law adjudication. Participants in this course will gain skill in administrative law procedures and methods such as telephone hearings. The course also addresses problems associated with all types of administrative law cases involving both represented and unrepresented parties.

#### LOGIC AND OPINION WRITING FOR ADMINISTRATIVE LAW JUDGES

Washington, DC    Tuition: \$1,095    Conference Fee: \$260

This course is divided into two segments: logic and opinion writing. Each segment focuses on one subject and has different faculty. After the logic segment, participants will be able to define basic terms and concepts in the formal study of logic; describe the premises of inductive and deductive reasoning, especially categorical syllogisms and summarize relevant case law, oral arguments and trial presentation. After the opinion writing segment, participants will be able to organize the anatomy of an opinion with the use of orientation paragraphs, issue statements, findings of fact and conclusions, ruling of law or disposition and state the emphasis to be given to style, such as focus, sentence structure, and revision.

#### ADMINISTRATIVE LAW: REGULATORY AGENCIES

Tuition: \$895    Conference Fee: \$170

This course is designed for administrative law adjudicators to increase awareness of the unique procedural and substantive issues arising in the regulatory area. All administrative law judges, hearing officers and commissioners who hear cases of a regulatory nature are invited to attend.

#### MANAGING COMPLEX LITIGATION

Tuition: \$895    Conference Fee: \$170

This course prepares judges who hear cases which require extraordinary management efforts. Graduates will be able to summarize the ethical ramifications that complex cases present, describe the resources necessary to manage complex cases effectively and efficiently, outline the pretrial procedures that will assist in controlling litigants, lawyers and the pace of the case and identify the advantages and disadvantages of state and federal coordination. (For the PSC, this means coordination between our agency, DNR, the FCC and the FERC.) This course has specialty tracks in civil, criminal and administrative law.

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<sup>1</sup> CONFERENCE FEE: The mandatory conference fee provides for program costs of daily lunches, breaks special events and materials.

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  - San Diego, California May 12-17, 2002
  - Contact Chuck Jones: (850) 644-2653

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Program: Camp NARUC
  - August 4 - 16, 2002, Kellogg Hotel  
& Conference Center, MSU  
Campus, East Lansing, MI

### Center for Public Utilities (New Mexico State University)

- Practical Skills for A Changing Utility  
Industry: The Basics
  - May 11 - 17, 2002, Sheraton  
Uptown, Albuquerque, NM
  - October 20 - 25, 2002, Sheraton  
Uptown, Albuquerque, NM
- Current Issues Challenging the Energy  
and Telecommunication Industry
  - March 17 - 20, 2002, Eldorado  
Hotel, Santa Fe, NM

### National Regulatory Research Institute (NRRI) (at Ohio State University)

- NRRI Commissioner's Tutorial
- see also the NRRI's Online Newsletter

### The Public Utility Research Center (PURC) (Warrington College of Business Administration at the University of Florida)

- 11th International Training Program on Utility  
Regulation and Strategy  
January 14-25, 2002, Gainesville, Florida
- Competition in Wireless: Spectrum, Service and  
Technology Wars  
February 19-20, 2002, UF Hotel and  
Conference Center, Gainesville, Florida
- PURC Annual Conference -  
Regulation/Deregulation: It's Performance that  
Counts  
February 21-22, 2002, UF Hotel and  
Conference Center, Gainesville, Florida

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Commissioners



Gary W. Findlay  
Executive Director

*Missouri State Employees' Retirement System*

MEMORANDUM

TO: The Honorable Sheila Lumpe  
FROM: Gary Findlay  
SUBJECT: Cost Valuation  
DATE: February 23, 2000

I received the actuarial valuation for transferring nine regulatory law judges of the Public Service Commission (PSC) from MOSERS' General Employee Plan to the Administrative Law Judges and Legal Advisors' Plan (ALJLAP).

Proposed Benefit

Regulatory law judges of the PSC would be covered by the ALJLAP.

Proposed Cost

The following table illustrates the computed increase in the employer contribution rate that would be necessary to fund the proposed benefit change on level cost basis:

	<i>Present Benefits</i>	<i>Proposed Benefits</i>	<i>Change</i>
Total Contribution Rate	22.32%	22.02%	(0.30)% *
Valuation Payroll	\$3,489,000	\$3,915,000	\$426,000
Contribution Dollars	\$779,000	\$862,000	\$83,000

\*The new members under the proposed legislation have an average entry-age that is six years younger than that of the current group. This causes the contribution rate to decline as a percent of payroll since there is more time to accumulate assets prior to retirement. However, it is important to note that the contribution dollars would be higher due to an increase in the valuation payroll.

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

FISCAL NOTE

L.R. NO.: 4642-01  
BILL NO.: HB 2090  
SUBJECT: Retirement: Regulatory Law Judges  
TYPE: Original  
DATE: March 14, 2000

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
Public Service Commission Funds	(\$37,026)	(\$44,432)	(\$44,432)
Total Estimated Net Effect on <u>All</u> State Funds	(\$37,026)	(\$44,432)	(\$44,432)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
None	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
Local Government	\$0	\$0	\$0

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 3 pages.

## FISCAL ANALYSIS

### ASSUMPTION

Officials of the **Joint Committee on Public Employee Retirement** have reviewed this proposal and have determined that it does not represent a "substantial proposed change" in future plan benefits as defined in section 105.660(5), RSMo. Therefore, an actuarial cost statement is not required.

Officials of the **Office of Administration** assume any fiscal impact would be determined by the Missouri State Employees' Retirement System.

Officials of the **Missouri State Employees' Retirement System (MOSERS)** assume the proposal would provide that attorneys appointed by the Public Service Commission to preside over matters pending before the commission (excluding the general counsel or any attorney serving under the general counsel) would be transferred from the General Employee Plan to the Administrative Law Judges' and Legal Advisors' Plan. Contributions by the state to MOSERS would increase as shown below:

	Present Benefits	Proposed Benefits	Change
Contribution Rate	22.32%	22.02%	(0.30)% *
Valuation Payroll	\$3,489,000	\$3,915,000	\$426,000
Contributions	\$779,000	\$862,000	\$83,000

\* The new members under the proposed legislation have an average entry-age that is six years younger than that of the current group. This causes the contribution rate to decline as a percent of payroll since there is more time to accumulate assets prior to retirement. However, MOSERS officials note that it is important to note that the contributions would be higher due to an increase in the valuation payroll.

Officials of the **Department of Economic Development - Public Service Commission** also provided the above data in their estimate of fiscal impact.

**Oversight** also assumes that there would be some offsetting savings in that contributions to the General Employee Plan at the rate of 11.59% of salaries would no longer be made. Oversight calculated the net increase in state contributions based on the covered payroll of \$426,000 multiplied by the increase in the contribution rate for these employees of 10.43% (22.02% less

L.R. NO. 4642-01  
BILL NO. HB 2090  
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March 14, 2000

ASSUMPTION (continued)

11.59%). Annual contributions by the state to MOSERS would increase by \$44,432 as a result of the proposal.

	FY 2001 (10 Mo.)	FY 2002	FY 2003
<u>FISCAL IMPACT - State Government</u>			
<b>PUBLIC SERVICE COMMISSION FUNDS</b>			
<u>Costs - increased contributions to MOSERS</u>	<u>(\$37,026)</u>	<u>(\$44,432)</u>	<u>(\$44,432)</u>
	FY 2001 (10 Mo.)	FY 2002	FY 2003
<u>FISCAL IMPACT - Local Government</u>			
	\$0	\$0	\$0

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

The proposal would add attorneys who preside over Public Service Commission matters, other than the commission's general counsel or attorneys serving under the general counsel, to the retirement system of administrative law judges and workers' compensation legal advisors.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

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SOURCES OF INFORMATION

Joint Committee on Public Employee Retirement  
Office of Administration  
Missouri State Employees' Retirement System  
Department of Economic Development - Public Service Commission



Jeanne Jarrett, CPA  
Director  
March 14, 2000

## SUMMARY STATUTORY CITATIONS

### Administrative Law Judges and Legal Advisors' Plan (ALJLAP)

287.812 Definitions and references to groups eligible to participate in ALJLAP

### Labor and Industrial Relations Commissioners

- 286.010 Commission shall consist of three members (one must be licensed to practice law in Missouri)  
Must reside in state for five years prior to appointment  
Appointed by the governor with the advice and consent of Senate  
Must devote full-time to duties office
- 286.020 Six-year terms  
Governor may remove any member of the commission for incompetence
- 286.060 Commission has all the powers, duties and responsibilities conferred or imposed on it by Workers' Compensation Law, etc.  
Can approve or disapprove all rules or regulations promulgated within the department  
May hold hearings, require attendance of witnesses, administer oaths and take testimony  
Commissioners have power to certify official acts
- 286.070 Authority to employ attorneys

### Division of Workers' Compensation

- 287.460 ALJs have authority to hear summary proceedings and determine disputes by written award (references findings of fact, rulings of law and any other matters pertinent to the issue)  
ALJs can develop rule procedures involving mediation including settlement awards
- 287.470 Commission has authority to rehear and may change award
- 287.495 Final award of the commission is binding; can be appealed to appellate court
- 287.560 Authority (division, ALJs, commission) to issue process, subpoena witnesses, administer oaths, examine books and papers, etc.
- 287.600 ALJs must take oath
- 287.610 Division may appoint ALJs  
ALJs must be licensed lawyers in Missouri  
ALJs must devote full-time to duties of office  
ALJs removed by the governor  
ALJs have jurisdiction to hear and determine claims upon original hearing; but no jurisdiction upon any review hearing  
ALJs and legal advisors required to participate in specific training that pertains to elements of knowledge and procedure for competent performance of duties. Division establishes training (which includes training in medical determinations and records, mediation and legal issues pertaining to worker's compensation adjudication)

- 287.615 States salaries of ALJs and legal advisors
- 287.616 Legal advisors authority to act in capacity of associate ALJ with power to approve settlement agreements  
Legal advisors authority to act in capacity of associate ALJ in offices having only one ALJ and can hear and determine claims upon original hearing (also given jurisdiction and powers vested in Workers' Compensation)

#### State Board of Mediation

- 295.030 Five persons appointed by the governor with advice and consent of Senate (chairman is neither an employee or an employer of labor)
- 295.040 Required to take an oath
- 295.050 Chairman to devote full-time to duties of office
- 295.060 Chairman to receive a salary
- 295.070 Board has powers to employ and fix compensation of conciliators and other assistants  
 Board has power to issue subpoenas requiring testimony of witness and production of evidence
- 295.080 Board has authority to bring about settlement including negotiating and drafting agreement
- 295.150 Board files with governor a report, resume of evidence and recommendations
- 295.190 Governor has authority to prescribe necessary rules and regulations

#### Administrative Hearing Commission

- 621.015 Three commissioners appointed by governor with advice and consent of Senate  
 Six-year terms  
 Required to take an oath  
 Must be licensed lawyer in Missouri  
 Must devote full-time to duties of office
- 621.035 Rulemaking authority pertaining to filing and processing of complaints  
 May administer oaths
- 621.045 Commissioners to conduct hearings and make findings of fact and conclusions of law
- 621.110 Commissioners may make recommendations to appropriate disciplinary action, but such recommendations are not binding on agencies.
- 621.145
- 621.189 Final decisions subject to judicial review
- 621.198 Final decisions upheld when authorized by law and supported by evidence on whole record
- 621.198 Commission to publish and file rules of procedure

### **Public Service Commission**

- 386.050 Commission to consist of five members appointed by the governor with the advice and consent of Senate, one designated to be chairman  
Must be a resident and resided in state for five years preceding appointment  
Must be qualified voter and not less than 25 years of age  
Six-year terms
- 386.060 Governor may remove commissioners for inefficiency, misconduct  
Legislature also has power to remove commissioners for dereliction of duty
- 386.110 Commissioners and persons appointed to office or employment by governor or commission shall take an oath
- 386.130 Commissioners' authority to conduct investigations, inquiries, hearing and decisions shall be deemed to be that of commission
- 386.230 Commissioners' authority to arbitrate
- 386.240 Commission may authorize any person employed by it do or perform any act, matter or thing which the commission is authorized under the chapter to performed
- 386.410 Commission to adopt rules of procedure; proceedings to be informal
- 386.420 Commission may investigate; depose witnesses
- 386.440 Commissioners' authority to issue subpoenas
- 386.500 Rehearing before the commission
- 386.510 Review by circuit court

### **State Tax Commission**

- 138.190 Commission composed of three members appointed by the governor with advice and consent of Senate  
Six-year terms
- 138.200 Commissioners required to be qualified voters, taxpayers and residents of state for five years preceding appointment  
Must devote full time to duties of office
- 138.210 Must take an oath
- 138.230 Commissioners to receive salary
- 138.240 Commissioners' authority to conduct investigations, inquiries, hearing and decisions shall be deemed to be that of commission
- 138.360 Commission may subpoena witnesses
- 138.370 Commission has power to examine books

- 138.431 Commission has authority to appoint hearing officers who are subject to supervision by commission.  
Commission has authority to promulgate rules for mediation  
Refers to hearing officer's decision and order, findings of fact and conclusions of law
- 138.432 Commission to review decisions of hearing officers; may change final decision  
Decision of commission subject to judicial review

**Division of Motor Carrier Safety – Administrative Law Judges**

- 622.015 Powers, duties and function of the Public Service Commission relating to transportation are transferred to Division
- 622.020 Three administrative law judges nominated by department director and appointed by the Governor  
Six-year terms  
Must be an attorney admitted to practice in Missouri  
Must devote full-time to duties of office  
ALJs compensated at the same rate as administrative hearing commissioners  
ALJs, acting together, shall make necessary rules
- 622.030 ALJs assume all duties imposed by the commissioners  
ALJs to hear and decide all matters concerning transportation
- 622.035 Refers to record of formal hearings and review procedure
- 622.120 ALJs must take an oath
- 622.140 Division may conduct joint investigations, hold joint hearings
- 622.150 Division may enter into reciprocal agreements
- 622.160 Division may arbitrate
- 622.170 Division may delegate authority
- 622.340 Division or ALJs may depose witnesses  
Full record of proceedings on any formal hearing taken by a reporter
- 622.360 ALJs may issue subpoenas
- 622.420 Division shall conduct rehearings and may modify order
- 622.430 Review by circuit court

### **Personnel Advisory Board**

- 36.050** Board to consist of seven members appointed by Governor with advice and consent of Senate  
Removable only for just cause by Governor  
Board to receive compensation for each day devoted to work of the board
- 36.060** Board may conduct hearings and render decisions on appeals  
Board may investigate  
Board may promulgate rules and regulations
- 36.070** Board has power to prescribe rules and regulations
- 36.390** Board may delegate hearing appeals to hearing officers  
Hearing officers to have power of administering oaths, subpoena witnesses, compel production of evidence except making the final decision  
Hearing officers may prepare summary, findings of fact, conclusions of law, decision and appropriate order for approval of board  
Decisions of the Board final and binding; subject to review on record by circuit court
- 36.400** Board and director has powers to administer oaths, subpoena witnesses, compel production of evidence

### **Board of Probation and Parole**

- 217.030** Chairman of board appointed by Governor and serves as director of division of probation and parole
- 217.655** Board to consist of seven members appointed by the governor with advice and consent of senate  
Six-year terms  
Members to devote full-time to duties of office  
Must take an oath
- 217.670** Decisions of board shall be a majority vote  
Hearing panel to consist of one board member and two hearing officers appointed by board  
Appeal of decision of the hearing panel to board  
Board decision final
- 217.690** Board shall adopts rules

## STATUTORY CITATIONS

### Administrative Law Judges and Legal Advisors' Plan (ALJLAP)

The ALJLAP was established August 13, 1984. To be eligible to participate in the ALJLAP, a member must be serving in the one of the following positions:

- Administrative Law Judges of the Division of Workers' Compensation
- Legal Advisor of the Division of Workers' Compensation
- Chairperson of the State Board of Mediation
- Member of the Labor and Industrial Relations Commission
- Attorney or legal counsel appointed or employed by the Labor and Industrial Relations Commission
- Administrative Hearing Commissioner assigned to the Office of Administration

#### **287.812 Definitions.--**

As used in sections 287.812 to 287.855, unless the context clearly requires otherwise, the following terms shall mean:

(1) "Administrative law judge", any person appointed pursuant to section 287.610 or section 621.015, RSMo, or any person who hereafter may have by law all of the powers now vested by law in administrative law judges appointed under the provisions of the workers' compensation law;

(2) "Beneficiary", a surviving spouse married to the deceased administrative law judge or legal advisor of the division of workers' compensation continuously for a period of at least two years immediately preceding the administrative law judge's or legal advisor's death and also on the day of the last termination of such person's employment as an administrative law judge or legal advisor for the division of workers' compensation, or if there is no surviving spouse eligible to receive benefits, any minor child of the deceased administrative law judge or legal advisor, or any child of the deceased administrative law judge or legal advisor who, regardless of age, is unable to support himself because of mental retardation, disease or disability, or any physical handicap or disability, who shall share in the benefits on an equal basis with all other beneficiaries;

(3) "Benefit", a series of equal monthly payments payable during the life of an administrative law judge or legal advisor of the division of workers' compensation retiring pursuant to the provisions of sections 287.812 to 287.855 or payable to a beneficiary as provided in sections 287.812 to 287.850;

(4) "Board", the board of trustees of the Missouri state employees' retirement system;

(5) "Division", the division of workers' compensation of the state of Missouri;

(6) "Legal advisor", any person appointed or employed pursuant to section 287.600, 287.615, or 287.616 to serve in the capacity as a legal advisor or an associate administrative law judge and any person appointed pursuant to section 286.010, RSMo, or pursuant to section 295.030, RSMo, and any attorney or legal counsel appointed or employed pursuant to section 286.070, RSMo;

(7) "Salary", the total annual compensation paid for personal services as an administrative law judge or legal advisor, or both, of the division of workers' compensation by the state or any of its political subdivisions.

(L. 1984 H.B. 1106, A.L. 1987 H.B. 564 merged with H.B. 713, A.L. 1994 H.B. 1149, A.L. 1997 H.B. 356, A.L. 1998 H.B. 971)

### The Labor and Industrial Relations Commission

The Labor and Industrial Relations Commission is composed of three commissioners. Each commissioner is appointed to a staggered six-year term by the governor with the advice and consent of the Senate. One member of the Commission, a licensed Missouri attorney, represents the public. Another member represents the employer, while the remaining member represents the employee. The governor designates one of these members as chair.

The Commission hears all appeals from a decisions and awards in workers' compensation, unemployment compensation, prevailing wage and victims of crime compensation cases at the highest administrative level. In connection with these appellate duties, the Commission holds hearings and renders written opinions pursuant to the provisions of the Missouri Administrative Procedures Act. These opinions, in turn, are subject to review by the Missouri Supreme Court and by courts of lesser jurisdiction.

In addition, the Commission is charged with the statutory authority to approve or disapprove all rules or regulations promulgated by the divisions with the Department.

**286.010 Creation of department of labor and industrial relations--industrial relations commission of Missouri--members, appointment, qualifications --chairman.--**

There is hereby created and established a separate department of the state government to be known as "The Department of Labor and Industrial Relations". Such department shall be under the control, management and supervision of a commission to be known and designated as "The Labor and Industrial Relations Commission of Missouri". Such commission shall consist of three members, each of whom shall have resided in this state for at least five years immediately prior to the person's appointment, to be appointed by the governor, by and with the advice and consent of the senate. One member of the commission shall be a person who, on account of the person's previous vocation, employment, affiliation or interests shall be classified as a representative of employers, and one member who, on account of the person's previous vocation, employment, affiliation or interests shall be classified as a representative of employees, and ~~one member~~, who, by reason of the person's previous activities and interests shall be classified as a representative of the public ~~and who is licensed to practice law in the state of Missouri~~; provided, however, that not more than two members of the commission shall be of the same political party. A member of the commission shall be designated by the governor as the chairman of the commission. ~~During the member's term of membership on the commission, no member shall engage in any other business, vocation or employment, or serve as an officer or committee member of any political party or organization.~~ Any two commissioners shall constitute a quorum. The governor shall fill any vacancy within sixty days but no vacancy shall impair the right of the remaining commissioners to exercise all powers of the commission.

(L. 1945 p. 1101 § 1. A.L. 1995 H.B. 300 & 95)

(1972) Where the final award and the order denying the motion to vacate were signed by two members of the commission thus constituting a quorum or majority, they were acts of the commission and were totally within its powers even though the member dissenting each time was a different member. *Graphenreed v. Ford Motor Company (A.)*, 472 S.W.2d 68.

**286.020 Term of office--vacancies--removal of member.--**

The term of office of each member of the commission shall be six years except that when first constituted one member shall be appointed for two years, one for four years and one for six years, and thereafter all vacancies shall be filled as they occur. The terms of office of the first members of the commission shall begin on the date of their appointment which shall be within thirty days after the effective date of this chapter. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed, shall be appointed by the governor, by and with the advice and consent of the senate, for the remainder of such term. ~~The governor may remove any member of the commission, after notice and hearing, for gross inefficiency, mental or physical incapacity, neglect of duties, malfeasance, misfeasance or nonfeasance in office, incompetence or for any offense involving moral turpitude or oppression in office.~~

(L. 1945 p. 1101 § 2, A.L. 1995 H.B. 300 & 95)

**286.060. Labor and industrial relations commission, powers and duties--rulemaking authority, procedure.--**

1. It shall be the duty of the commission, and it shall have power, jurisdiction and authority:
  - (1) To sue and be sued in its official name;
  - (2) To have and use an official seal bearing the following inscription: "The Labor and Industrial Relations Commission of the State of Missouri", which shall be judicially noticed;
  - (3) ~~To have all powers, duties and responsibilities conferred or imposed upon it by the workers' compensation law (chapter 287, RSMo), the victims of crime law, chapter 595, RSMo, the division of labor standards law (within chapters 286, 290, 291, 292, 293, 294 and 444, RSMo), and the unemployment compensation law (chapter 288, RSMo);~~

- (4) ~~To approve or disapprove all rules or regulations promulgated by any division within the department;~~
  - (5) To establish and maintain as far as practicable a central system of collecting, preparing, compiling and reporting all material for statistical use in all divisions of the department of labor and industrial relations, and to this end the department shall have access to the books and records of all state departments, except those which are required by law to be kept confidential. The commission may by regulation permit employers or other persons to file combined reports of information required by law to be reported to the several divisions within the department whenever it finds that same or similar information is required by law to be reported by such employers or persons to more than one division within the department;
  - (6) To maintain, as far as practicable, a central system for payroll and other accounting for the several divisions in the department;
  - (7) To compile and publish, in printed form, at the expense of the divisions within the department all rules and regulations (except such rules and regulations which relate to the internal management of the department) which have been adopted by or with the approval of the commission, and to furnish copies thereof to any citizen of the state upon request;
  - (8) To adopt all regulations necessary to the efficient internal management of the department, not inconsistent with any provisions of law; and to adopt regulations governing its proceedings in connection with the exercise of its quasi-judicial functions;
  - (9) ~~The commission or any member of the commission may hold hearings, require the attendance of witnesses, administer oaths and take testimony;~~
  - (10) ~~Each of the commissioners shall have power to certify to official acts;~~
  - (11) To prepare and submit to each regular session of the general assembly and to the governor at the beginning of each session of the general assembly, a complete and detailed report of the activities of the department, including the activities of each division within the department, during the preceding biennial period. Such report shall include a balance sheet of the moneys in the various administrative funds under its jurisdiction as well as all information required to be reported by the various laws under its jurisdiction, which reports shall be in lieu of any report to the general assembly now required by law for any department or office, the powers and duties of which are by this chapter vested in a division in the department of labor and industrial relations;
  - (12) To require the division of employment security to furnish it with a stenographer or clerk to file, process and keep records of all cases appealed from that division to the labor and industrial relations commission; and
  - (13) To have and perform such other powers and duties as may be conferred or imposed upon it by law.
2. No rule or portion of a rule promulgated under the authority of this chapter shall become effective until it has been approved by the joint committee on administrative rules in accordance with the procedures provided in this section, and the delegation of the legislative authority to enact law by the adoption of such rules is dependent upon the power of the joint committee on administrative rules to review and suspend rules pending ratification by the senate and the house of representatives as provided in this section.
  3. Upon filing any proposed rule with the secretary of state, the filing agency shall concurrently submit such proposed rule to the committee, which may hold hearings upon any proposed rule or portion thereof at any time.
  4. A final order of rulemaking shall not be filed with the secretary of state until thirty days after such final order of rulemaking has been received by the committee. The committee may hold one or more hearings upon such final order of rulemaking during the thirty-day period. If the committee does not disapprove such order of rulemaking within the thirty-day period, the filing agency may file such order of rulemaking with the secretary of state and the order of rulemaking shall be deemed approved.
  5. The committee may, by majority vote of the members, suspend the order of rulemaking or portion thereof by action taken prior to the filing of the final order of rulemaking only for one or more of the following grounds:
    - (1) An absence of statutory authority for the proposed rule;
    - (2) An emergency relating to public health, safety or welfare;
    - (3) The proposed rule is in conflict with state law;
    - (4) A substantial change in circumstance since enactment of the law upon which the proposed rule is based.
  6. If the committee disapproves any rule or portion thereof, the filing agency shall not file such disapproved portion of any rule with the secretary of state and the secretary of state shall not publish in the Missouri Register any final order of rulemaking containing the disapproved portion.
  7. If the committee disapproves any rule or portion thereof, the committee shall report its findings to the senate and the house of representatives. No rule or portion thereof disapproved by the committee shall take effect so long

as the senate and the house of representatives ratify the act of the joint committee by resolution adopted in each house within thirty legislative days after such rule or portion thereof has been disapproved by the joint committee.

8. Upon adoption of a rule as provided in this section, any such rule or portion thereof may be suspended or revoked by the general assembly either by bill or, pursuant to section 8, article IV of the Constitution of Missouri, by concurrent resolution upon recommendation of the joint committee on administrative rules. The committee shall be authorized to hold hearings and make recommendations pursuant to the provisions of section 536.037, RSMo. The secretary of state shall publish in the Missouri Register, as soon as practicable, notice of the suspension or revocation.

(L. 1945 p. 1101 § 6, A.L. 1947 V. II p. 278, A.L. 1980 H.B. 1396, A.L. 1995 H.B. 300 & 95)

#### **286.070 Cost of administering each law, how paid.--**

The board of public buildings shall provide suitable offices for the commission. All costs, except the salaries of the commissioners, the secretary of the commission, clerks, stenographers, statisticians and attorneys, as may be reasonably required in the performance of the commission's duties, including cost of furniture, equipment, materials, supplies, repairs, additions, travel, operations, salaries, printing, shall be paid out of the general revenue, and the general assembly shall make adequate appropriations for all such expenses. The commission shall employ and fix the compensation of such clerks, stenographers, statisticians and attorneys as may be reasonably required in the performance of the commission's duties. Said compensation shall be funded by the divisions of employment security, labor standards and workers' compensation according to the workload received by the commission from said divisions, and assigned to said personnel.

(L. 1945 p. 1101 § 7, A.L. 1947 V. II p. 278, A.L. 1995 H.B. 300 & 95)

#### **CROSS REFERENCE**

Legal advisors to commission to serve as special consultants to the board of trustees for the Missouri state employees' retirement system, RSMo 104.332

### **The Division of Workers' Compensation**

The Division of Workers' Compensation, along with the Labor and Industrial Relations Commission, has been entrusted with the administration of Missouri's Workers' Compensation Law. The division's primary function is to provide prompt and equitable resolutions of all cases of work-related injuries and occupational diseases with a minimum of formal litigation.

The division has 46 administrative law judges and legal advisors. The adjudication staff holds dockets, including hearings, that are designed to resolve disputes between injured workers and employers/insurance companies. The division has eight local offices around the state. The adjudication staff also holds dockets at 38 other sites either in the county where the injury occurred or an adjacent county.

#### **287.460 Division hearings, findings sent to parties and insurer--mediation services, division to establish procedures, requirements.--**

1. The division, through an administrative law judge, shall hear in a summary proceeding the parties at issue and their representatives and witnesses and shall determine the dispute by issuing the written award within ninety days of the last day of the hearing. The hearing shall be concluded within thirty days of the date of commencement of the hearing, except in extraordinary circumstances where a lengthy trial or complex issues necessitate a longer time than ninety days. All evidence introduced at any such hearings shall be reported by a competent reporter appointed by the division or be recorded by electronic means. The award, together with a statement of the findings of fact, rulings of law and any other matters pertinent to the question at issue, shall be filed with the record of proceedings, and a copy of the award shall immediately be sent by United States mail to the parties in dispute and the employer's insurer.

2. The division of workers' compensation shall develop by rule procedures whereby mediation services are provided to the parties in a claim for workers' compensation benefits whereby claims may be mediated by the parties at a prehearing conference when the division determines that a claim may be settled or upon application for a mediation settlement conference filed by either party.

3. The division may require the parties to produce at the mediation conference all available medical records and reports. Such mediation conference shall be informal to ascertain the issues and attempt to resolve the claim or other pending issues. Such mediation conference may be set at any time prior to the commencement of the evidentiary hearing and nothing in this section shall be interpreted to delay the setting of the matter for hearing. Upon the request of any party, a person providing mediation settlement services shall be disqualified from conducting any evidentiary hearing relating to the claim without limiting the rights conferred by section 287.810.

(RSMo 1939 § 3729, A.L. 1945 p. 1996, A.L. 1953 p. 529, A.L. 1977 S.B. 400, A.L. 1993 S.B. 251, A.L. 1998 H.B. 1237, et al.)

Prior revision: 1929 § 3339

#### **287.470 Commission may review and change award.—**

Upon its own motion or upon the application of any party in interest on the ground of a change in condition, the commission may at any time upon a rehearing after due notice to the parties interested review any award and on such review may make an award ending, diminishing or increasing the compensation previously awarded, subject to the maximum or minimum provided in this chapter, and shall immediately send to the parties and the employer's insurer a copy of the award. No such review shall affect such award as regards any moneys paid.

(RSMo 1939 § 3730)

Prior revision: 1929 § 3340

(1951) In order to obtain award on ground of change in condition, injured employee must show his condition has grown worse, not that it was always worse than commission found it to be. *Brammer v. Binkley Mining Co. (A.)*, 244 S.W.2d 584.

(1963) Commission's finding that claimant, previously found to be totally and permanently disabled, who had become satisfactory full time employee of state hospital, had undergone substantial change in condition was supported by substantial evidence. *Vandaveer v. Reinhart & Donovan Construction Co. (A.)*, 370 S.W.2d 156.

(1981) The Labor and Industrial Relations Commission does not have jurisdiction to reopen a workers' compensation award after payment period has ended. *Yokel v. Beta Corp. (A.)*, 615 S.W.2d 78.

(1985) The term "at any time" as it appears in this section means before payment of the award or before the expiration of the time during which the award is to be paid, whichever is later. *Holman v. Normandy Osteopathic Hospital (A.)*, 691 S.W.2d 360.

#### **287.495 Final award conclusive unless an appeal is taken—grounds for setting aside—disputes governed by this section, claims arising on or after August 13, 1980.—**

1. The final award of the commission shall be conclusive and binding unless either party to the dispute shall, within thirty days from the date of the final award, appeal the award to the appellate court. The appellate court shall have jurisdiction to review all decisions of the commission pursuant to this chapter where the division has original jurisdiction over the case. Venue as established by subsection 2 of section 287.640 shall determine the appellate court which hears the appeal. Such appeal may be taken by filing notice of appeal with the commission, whereupon the commission shall, under its certificate, return to the court all documents and papers on file in the matter, together with a transcript of the evidence, the findings and award, which shall thereupon become the record of the cause. Upon appeal no additional evidence shall be heard and, in the absence of fraud, the findings of fact made by the commission within its powers shall be conclusive and binding. The court, on appeal, shall review only questions of law and may modify, reverse, remand for rehearing, or set aside the award upon any of the following grounds and no other:

- (1) That the commission acted without or in excess of its powers;
- (2) That the award was procured by fraud;
- (3) That the facts found by the commission do not support the award;
- (4) That there was not sufficient competent evidence in the record to warrant the making of the award.

2. The provisions of this section shall apply to all disputes based on claims arising on or after August 13, 1980.

(L. 1980 H.B. 1396, A.L. 1998 H.B. 1237, et al.)

**287.560 Division or commission may administer oaths, issue process, take depositions--depositions may be taken by electronic means--costs, how paid.--**

The division, any administrative law judge thereof or the commission, shall have power to issue process, subpoena witnesses, administer oaths, examine books and papers, and require the production thereof, and to cause the deposition of any witness to be taken and the costs thereof paid as other costs under this chapter. Any party shall be entitled to process to compel the attendance of witnesses and the production of books and papers, and at his own cost to take and use depositions in like manner as in civil cases in the circuit court, except that depositions may be recorded by electronic means. The party electing to record a deposition by electronic means shall be responsible for the preparation and proper certification of the transcript and for maintaining a copy of the tape or other medium on which the deposition was recorded for the use of the division or any party upon request. Copies of the transcript shall be provided to all parties at a cost approved by the division. Subpoena shall extend to all parts of the state, and may be served as in civil actions in the circuit court, but the costs of the service shall be as in other civil actions. Each witness shall receive the fees and mileage prescribed by law in civil cases, but the same shall not be allowed as costs to the party in whose behalf the witness was summoned unless the persons before whom the hearing is had shall certify that the testimony of the witness was necessary. All costs under this section shall be approved by the division and paid out of the state treasury from the fund for the support of the Missouri division of workers' compensation; provided, however, that if the division or the commission determines that any proceedings have been brought, prosecuted or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who so brought, prosecuted or defended them. The division or the commission may permit a claimant to prosecute a claim as a poor person as provided by law in civil cases.

(RSMo 1939 § 3740, A.L. 1965 p. 397, A.L. 1980 H.B. 1396, A.L. 1993 S.B. 251)  
Prior revision: 1929 § 3350

**287.600 Oath of office.--**

Each person appointed to office of employment by the division shall, before entering upon his duties, take and subscribe to an oath or affirmation to support the Constitution of the United States, and of this state, and to faithfully and honestly discharge the duties of such office or employment. Each person appointed to office by the division shall give his whole time to his duties, nor shall he serve on any committee of any political party.

(RSMo 1939 § 3745, A.L. 1945 p. 1996, A.L. 1947 V. II p. 445)  
Prior revision: 1929 § 3355

**287.610 Administrative law judges, appointment and qualification--annual evaluations--removal, review committee, process--jurisdiction, powers--continuing training required--rules.--**

1. The division may appoint such number of administrative law judges as it may find necessary, but not exceeding twenty-five in number beginning January 1, 1999, with one additional appointment authorized as of July 1, 2000, and one additional appointment authorized in each succeeding year thereafter until and including the year 2004, for a maximum of thirty authorized administrative law judges. Appropriations for any additional appointment shall be based upon necessity, measured by the requirements and needs of each division office. Administrative law judges shall be duly licensed lawyers under the laws of this state. Administrative law judges shall not practice law or do law business and shall devote their whole time to the duties of their office. Any administrative law judge may be discharged or removed only by the governor pursuant to an evaluation and recommendation by the administrative law judge review committee, hereinafter referred to as "the committee", of the judge's conduct, performance and productivity.

2. The division shall require and perform annual evaluations of an administrative law judge, associate administrative law judge and legal advisor's conduct, performance and productivity based upon written standards established by rule. The division, by rule, shall establish the written standards on or before January 1, 1999.

(1) After an evaluation by the division, any administrative law judge, associate administrative law judge or legal advisor who has received an unsatisfactory evaluation in any of the three categories of conduct, performance or productivity, may appeal the evaluation to the committee.

(2) The division director shall refer an unsatisfactory evaluation of any administrative law judge, associate administrative law judge or legal advisor to the committee.

(3) When a written, signed complaint is made against an administrative law judge, associate administrative law judge or legal advisor, it shall be referred to the director of the division for a determination of merit. When the director finds the complaint has merit, it shall be referred to the committee for investigation and review.

3. The administrative law judge review committee shall be composed of one administrative law judge, who shall act as a peer judge on the committee and shall be domiciled in a division office other than that of the judge being reviewed, one employee representative and one employer representative, neither of whom shall have any direct or indirect employment or financial connection with a workers' compensation insurance company, claims adjustment company, health care provider nor be a practicing workers' compensation attorney. The employee representative and employer representative shall have a working knowledge of workers' compensation. The employee and employer representative shall serve for four-year staggered terms and they shall be appointed by the governor. The initial employee representative shall be appointed for a two-year term. The administrative law judge who acts as a peer judge shall be appointed by the chairman of the labor and industrial relations commission and shall not serve on any two consecutive reviews conducted by the committee. Chairmanship of the committee shall rotate between the employee representative and the employer representative every other year. Staffing for the administrative review committee shall be provided, as needed, by the director of the department of labor and industrial relations and shall be funded from the workers' compensation fund. The committee shall conduct a hearing as part of any review of a referral or appeal made according to subsection 2 of this section.

4. The committee shall determine within thirty days whether an investigation shall be conducted for a referral made pursuant to subdivision (3) of subsection 2 of this section. The committee shall make a final referral to the governor pursuant to subsection 1 of this section within two hundred seventy days of the receipt of a referral or appeal.

5. The administrative law judges appointed by the division shall only have jurisdiction to hear and determine claims upon original hearing and shall have no jurisdiction upon any review hearing, either in the way of an appeal from an original hearing or by way of reopening any prior award, except to correct a clerical error in an award or settlement if the correction is made by the administrative law judge within twenty days of the original award or settlement. The labor and industrial relations commission may remand any decision of an administrative law judge for a more complete finding of facts. The commission may also correct a clerical error in awards or settlements within thirty days of its final award. With respect to original hearings, the administrative law judges shall have such jurisdiction and powers as are vested in the division of workers' compensation under other sections of this chapter, and wherever in this chapter the word "commission", "commissioners" or "division" is used in respect to any original hearing, those terms shall mean the administrative law judges appointed under this section. When a hearing is necessary upon any claim, the division shall assign an administrative law judge to such hearing. Any administrative law judge shall have power to approve contracts of settlement, as provided by section 287.390, between the parties to any compensation claim or dispute under this chapter pending before the division of workers' compensation. Any award by an administrative law judge upon an original hearing shall have the same force and effect, shall be enforceable in the same manner as provided elsewhere in this chapter for awards by the labor and industrial relations commission, and shall be subject to review as provided by section 287.480.

6. Any of the administrative law judges employed pursuant to this section may be assigned on a temporary basis to the branch offices as necessary in order to ensure the proper administration of this chapter.

7. All administrative law judges and legal advisors shall be required to participate in, on a continuing basis, specific training that shall pertain to those elements of knowledge and procedure necessary for the efficient and competent performance of the administrative law judges' and legal advisors' required duties and responsibilities. Such training requirements shall be established by the division subject to appropriations and shall include training in medical determinations and records, mediation and legal issues pertaining to workers' compensation adjudication. Such training may be credited toward any continuing legal education requirements.

8. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

(RSMo 1939 § 3747, A.L. 1945 p. 1996, A.L. 1951 p. 611, A.L. 1955 p. 599, A.L. 1957 p. 530, A.L. 1959 S.B. 209, H.B. 93, A.L. 1961 p. 428, A.L. 1977 S.B. 400, A.L. 1980 H.B. 1396, A.L. 1987 H.B. 564, A.L. 1992 H.B. 975, A.L. 1993 S.B. 251, A.L. 1998 H.B. 1237, et al., A.L. 2001 S.B. 267)

Prior revision: 1929 § 3357

#### CROSS REFERENCE

Administrative judges for division of motor carrier and railroad safety, RSMo 622.020

### **287.615 Employees of division--compensation--selection.--**

1. The division may appoint or employ such persons as may be necessary to the proper administration of this chapter. All salaries to clerical employees shall be fixed by the division and approved by the labor and industrial relations commission. ~~The annual salary of each legal advisor, administrative law judge, administrative law judge in charge, and chief legal advisor shall be as follows:~~

- ~~(1) For each legal advisor, compensation at eighty percent of the rate at which an associate division circuit judge is compensated;~~
- ~~(2) For each chief legal advisor, compensation at the same rate as a legal advisor plus two thousand dollars;~~
- ~~(3) For each administrative law judge, compensation at ninety percent of the rate at which an associate division circuit judge is compensated;~~
- ~~(4) For each administrative law judge in charge, compensation at the same rate as an administrative law judge plus five thousand dollars.~~

2. The salary of the director of the division of workers' compensation shall be set by the director of the department of labor and industrial relations, but shall not be less than the salary plus two thousand dollars of an administrative law judge in charge. The appointees in each classification shall be selected as nearly as practicable in equal numbers from each of the two political parties casting the highest and the next highest number of votes for governor in the last preceding state election.

(RSMo 1939 § 3747, A.L. 1945 p. 1996, A.L. 1951 p. 611, A.L. 1955 p. 599, A.L. 1957 p. 530, A.L. 1959 S.B. 209, H.B. 93 § 287.610, A.L. 1961 p. 428, A.L. 1963 p. 411, A.L. 1965 p. 419, A.L. 1967 p. 392, A.L. 1971 S.B. 190, A.L. 1978 H.B. 1260, A.L. 1980 H.B. 1396, A.L. 1981 H.B. 324, A.L. 1984 S.B. 528, A.L. 1987 H.B. 564, A.L. 1998 H.B. 1237, et al.)

Prior revision: 1929 § 3357

Revisor's note: Salary adjustment index is printed, as required by § 105.005, in Appendix E.

### **287.616 Legal advisors to act as associate administrative law judges, when, powers.--**

~~1. Legal advisors shall act in the capacity of associate administrative law judges with the power to approve agreements of settlement or compromise entered into pursuant to section 287.390.~~

~~2. Legal advisors shall also act in the capacity of associate administrative law judges in those offices having only one administrative law judge and shall have jurisdiction to hear and determine claims upon original hearing. With respect to original hearings the legal advisor shall have such jurisdiction and powers as are vested in the division of workers' compensation under other sections of this chapter.~~

(L. 1980 H.B. 1396, A.L. 1983 H.B. 243 & 260, A.L. 1984 S.B. 528)

## **The State Board of Mediation**

The State Board of Mediation is a quasi-judicial board created by an act of the General Assembly in 1947 through the enactment of Chapter 295, RSMo.

The five-member board is appointed by the governor. Two members are employers of labor or selected from an association representing employers of labor. The other members hold membership in a bona fide trade or labor union. The fifth member is a neutral party who serves as full-time Chairman and administrator of the agency.

The board has no authority to process unfair labor practices. An appeal from a decision of the board may be taken to the circuit court. The board was originally established to mediate labor disputes occurring in public utilities. In addition, the board aided the utility employer and its union employees in their collective bargaining negotiations so that labor disputes in public utilities could be peacefully settled without strikes or lockouts.

### **295.030 Governor to appoint state board of mediation--members--qualifications --terms--vacancy.--**

1. ~~Within thirty days after the effective date of this chapter the governor, by and with the advice and consent of the senate, shall appoint five competent persons to serve as a state board of mediation; two of whom shall be employers of labor, or selected from some association representing employers of labor, and two of whom shall be employees holding membership in some bona fide trade or labor union; the fifth shall be some person who is neither an employee nor an employer of labor and who shall be chairman of said state board of mediation.~~

2. Two members of said board shall be appointed for one year, two for two years, and one for three years, and all appointments thereafter shall be for three years or until their respective successors are appointed in the manner herein provided.

3. If a vacancy occurs in said board by death or otherwise, at any time, the governor shall appoint some competent person having the same qualifications as his predecessor to fill the unexpired term.

(L. 1947 V. I p. 358 § 3)

#### **295.040 Oath of members--main office--meetings.--**

Each member of said board shall, before entering upon the duties of his office, take and subscribe an oath to support the Constitution of the United States and this state and to demean himself faithfully in his office. The main office of the state board of mediation shall be in Jefferson City, but the board may hold meetings at any time or any place in the state whenever the same shall become necessary, and three members of the board shall constitute a quorum for the transaction of business.

(L. 1947 V. I p. 358 § 4)

#### **295.050 Duties of chairman.--**

The chairman of the board shall devote his full time to his duties and shall have charge of the office of the board. He shall keep all records of the proceedings of the board, and shall supervise the work of the employees of the board, and shall have such other powers and duties as may be conferred, or imposed upon him by the board.

(L. 1947 V. I p. 358 § 5)

#### **295.060 Compensation and expenses of board members.--**

The chairman of the board shall receive a salary in an amount to be determined by the director of the department of labor and industrial relations and within the limits of the appropriations for the purpose. Each of the other members of the state board of mediation shall receive as compensation for their services an amount to be determined by the director of the department of labor and industrial relations, but not to exceed fifty dollars per day; and in addition thereto shall receive all necessary travel and other expenses incurred while actually engaged in the performance of their duties as such members.

(L. 1947 V. I p. 358 § 6, A.L. 1961 p. 439, A.L. 1980 H.B. 1266, A.L. 1995 H.B. 300 & 95)

#### **295.070 Powers and duties of board.--**

1. The state board of mediation shall have power to employ and fix the compensation of conciliators and other assistants and to delegate to such assistants such powers as may be necessary to carry out its duties under this chapter. The board shall by regulation prescribe the methods of procedure before it.

2. The board shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence which relates to any matter under investigation by the board. In cases of refusal to obey a subpoena issued by the board the circuit court of Cole County or of any county where the person refusing to obey such subpoena may be found, on application by the board, shall have power to issue an order requiring such person to appear before the board and to testify and produce evidence ordered touching the matter under investigation, and any failure to obey such order shall be punished by the court as a contempt thereof.

(L. 1947 V. I p. 358 § 7)

#### **295.080 Labor disputes--action by board.--**

1. Upon receipt of notice of any labor dispute between parties subject to this chapter, the board shall require such parties to keep it advised as to the progress of negotiations therein.

2. Upon application of either party to a labor dispute or upon its own motion the board may fix a time and place for a conference between the parties to the dispute and the board or its representative, upon the issues involved in the labor dispute and shall take whatever steps it deems expedient to bring about a settlement of the dispute including assisting in negotiating and drafting a settlement agreement.

3. It shall be the duty of all parties to a labor dispute to respond to the summons of the board for joint or several conferences with it or with its representatives and to continue in such conference until excused by the board or its representative.

(L. 1947 V. I p. 358 § 8)

(1951) This section is not in conflict with the Federal Labor Management Relations Act of 1947. (29 U.S.C.A. § 141 et seq.). State ex rel. State Board of Mediation v. Pigg, 362 Mo. 798, 244 S.W.2d 75.

**295.150 Report of hearing to governor.--**

Within five days after closing such hearings the panel shall file with the governor, in writing, a report setting forth a statement of the controversy, a resume of the evidence submitted to it and its recommendations based thereon.

(L. 1947 V. I p. 358 § 17)

**295.190 Governor to prescribe rules and regulations.--**

The governor is authorized to prescribe the necessary rules and regulations to carry out the provisions of this chapter.

(L. 1947 V. I p. 358 § 20)

**CROSS REFERENCE**

Rules and regulations, where filed, effective date, Chap. 536, RSMo

**The Administrative Hearing Commission**

The Administrative Hearing Commission is a neutral, independent administrative tribunal that decides disputes involving state agencies and another party, usually a private person or corporation. The Commission typically decides the cases after a trial-type hearing. It hears evidence and arguments from the state agency and from the other party. Any party, including the state agency, may seek review of the Administrative Hearing Commission's decision from the judicial branch.

The statutes authorize jurisdiction for the Administrative Hearing Commission to resolve disputes over decisions of more than 100 state agencies. Several thousand cases per year are filed with the Administrative Hearing Commission. The Commission consists of not more than three members, appointed by the governor and confirmed by the Senate, who serve six-year terms.

**621.015. Administrative hearing commission, number of commissioners --qualifications--appointment--terms--compensation.--**

The "Administrative Hearing Commission" is assigned to the office of administration. It shall consist of no more than three commissioners. The commissioners shall be appointed by the governor with the advice and consent of the senate. The term of each commissioner shall be for six years and until his successor is appointed, qualified and sworn. The commissioners shall be attorneys at law admitted to practice before the supreme court of Missouri, but shall not practice law during their term of office. Each commissioner shall receive annual compensation of fifty-one thousand dollars plus any salary adjustment provided pursuant to section 105.005, RSMo. Each commissioner shall also be entitled to actual and necessary expenses in the performance of his duties. The office of the administrative hearing commission shall be located in the City of Jefferson and it may employ necessary clerical assistance, compensation and expenses of the commissioners to be paid from appropriations from general revenue made for that purpose.

(L. 1965 p. 277 § 1, A.L. 1977 H.B. 841, A.L. 1978 S.B. 661, A.L. 1984 S.B. 528, A.L. 1986 S.B. 426)

\*Transferred 1984; formerly 161.252

Revisor's note: Salary adjustment index is printed, as required by § 105.005, RSMo, in Appendix E.

**621.035. Individual commissioners to have authority of entire commission --exceptions--procedure before commission.--**

Each administrative hearing commissioner shall have authority to exercise all powers granted to the administrative hearing commission without the concurrence of any other commissioner, except with respect to the rulemaking powers, in which all commissioners must concur. The method of assignment of petitions, appeals or other cases may be determined by rule or other agreement between the commissioners. Formal procedural requirements shall not be required of any complaint filed pursuant to any provision of law relating to the administrative hearing commission, and substantial compliance with the requirements of the law relating to the administrative hearing commission shall be deemed sufficient; however, all testimony in any hearing shall be under oath and an administrative hearing commissioner may administer oaths or affirmations to any witness. It shall not be necessary for a person to be represented by counsel in order to institute any such proceeding, and the administrative hearing commission shall adopt rules and procedures which shall facilitate the filing and processing of such complaints without formal representation. The administrative hearing commission may stay or suspend any action of an administrative agency pending the commission's findings and determination in the cause. The administrative hearing commission may condition the issuance of such order upon the posting of bond or other security in such amount as the commission deems necessary to adequately protect the public interest.

(L. 1978 S.B. 661)

\*Transferred 1984; formerly 161.263

**621.045. Commission to conduct hearings, make determinations--boards included--settlement agreements.--**

1. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in those cases when, under the law, a license issued by any of the following agencies may be revoked or suspended or when the licensee may be placed on probation or when an agency refuses to permit an applicant to be examined upon his qualifications or refuses to issue or renew a license of an applicant who has passed an examination for licensure or who possesses the qualifications for licensure without examination:

- Missouri State Board of Accountancy
- Missouri Board of Registration for Architects, Professional Engineers and Land Surveyors
- Board of Barber Examiners
- Board of Cosmetology
- Board of Chiropody and Podiatry
- Board of Chiropractic Examiners
- Missouri Dental Board
- Board of Embalmers and Funeral Directors
- Board of Registration for the Healing Arts
- Board of Nursing
- Board of Optometry
- Board of Pharmacy
- Missouri Real Estate Commission
- Missouri Veterinary Medical Board
- Supervisor of Liquor Control
- Department of Health and Senior Services
- Department of Insurance
- Department of Mental Health

2. If in the future there are created by law any new or additional administrative agencies which have the power to issue, revoke, suspend, or place on probation any license, then those agencies are under the provisions of this law.

3. Notwithstanding any other provision of this section to the contrary, after August 28, 1995, in order to encourage settlement of disputes between any agency described in subsection 1 of this section and its licensees, any such agency shall:

(1) Provide the licensee with a written description of the specific conduct for which discipline is sought and a citation to the law and rules allegedly violated, together with copies of any documents which are the basis thereof, or file a contested case against the licensee, at least thirty days prior to offering the licensee a settlement proposal, and provide the licensee with an opportunity to respond to the allegations;

(2) If no contested case has been filed against the licensee, allow the licensee at least sixty days, from the date of mailing, during which to consider the agency's initial settlement offer and discuss the terms of such settlement offer with the agency;

(3) If no contested case has been filed against the licensee, advise the licensee that the licensee may, either at the time the settlement agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the administrative hearing commission for determination that the facts agreed to by the parties to the settlement constitute grounds for denying or disciplining the license of the licensee; and

(4) In any contact pursuant to this subsection by the agency or its counsel with a licensee who is not represented by counsel, advise the licensee that the licensee has the right to consult an attorney at the licensee's own expense.

4. If the licensee desires review by the administrative hearing commission pursuant to subdivision (3) of subsection 3 of this section at any time prior to the settlement becoming final, the licensee may rescind and withdraw from the settlement and any admissions of fact or law in the agreement shall be deemed withdrawn and not admissible for any purposes under the law against the licensee. Any settlement submitted to the administrative hearing commission shall not be effective and final unless and until findings of fact and conclusions of law are entered by the administrative hearing commission that the facts agreed to by the parties to the settlement constitute grounds for denying or disciplining the license of the licensee.

5. As to a matter settled prior to August 28, 1995, by consent agreement or agreed settlement, any party to a consent agreement or agreed settlement, other than a state agency, after having received written notice at their last known address known to the agency from the respective licensing agency of a person's rights under this section, shall have six months to file an action in the circuit court of Cole County contesting the authority of any agency described in subsection 1 of this section to enter into such consent agreement or agreed settlement. Any consent agreement or agreed settlement which is not invalidated by the court pursuant to this subsection shall be given full force and effect by all courts and agencies.

(L. 1965 p. 277 §§ 3, 12, A.L. 1978 S.B. 661, A.L. 1995 S.B. 3)

\*Transferred 1984; formerly 161.272

#### CROSS REFERENCE

Workers' compensation cases, this section not deemed to govern discovery between parties, RSMo 287.811

(1999) Subsection 5 of section is procedural and can be applied retrospectively without violating constitutional ban. Mendelsohn v. State Board of Registration for the Healing Arts, 3 S.W.3d 783 (Mo.banc).

#### **621.110. Commission's findings and recommendations--hearing by agency on disciplinary action.--**

Upon a finding in any cause charged by the complaint for which the license may be suspended or revoked as provided in the statutes and regulations relating to the profession or vocation of the licensee, the commission shall deliver or transmit by certified mail to the agency which issued the license the record and a transcript of the proceedings before the commission together with the commission's findings of fact and conclusions of law. The commission may make recommendations as to appropriate disciplinary action but any such recommendations shall not be binding upon the agency. A copy of the findings of fact, conclusions of law and the commission's recommendations, if any, shall be served upon the licensee in person or by certified mail. Within thirty days after receipt of the record of the proceedings before the commission and the findings of fact, conclusions of law, and recommendations, if any, of the commission, the agency shall set the matter for hearing upon the issue of appropriate disciplinary action and shall notify the licensee of the time and place of the hearing, provided that such hearing may be waived by consent of the agency and licensee where the commission has made recommendations as to appropriate disciplinary action. In case of such waiver by the agency and licensee, the recommendations of the commission shall become the order of the agency. The licensee may appear at said hearing and be represented by counsel. The agency may receive evidence relevant to said issue from the licensee or any other source. After such hearing the agency may order any disciplinary measure it deems appropriate and which is authorized by law. In any case where the commission fails to find any cause charged by the complaint for which the license may be suspended or revoked, the commission shall dismiss the complaint, and so notify all parties.

(L. 1965 p. 277 § 5, A.L. 1978 S.B. 661)

\*Transferred 1984; formerly 161.292

#### **621.145. Judicial review.--**

Except as otherwise provided by law, all final decisions of the administrative hearing commission shall be subject to judicial review as provided in and subject to the provisions of sections 536.100 to 536.140, RSMo, except that in cases where a disciplinary order may be entered by the agency, no decision of the administrative hearing commission shall be deemed final until such order is entered. For purposes of review, the action of the commission and the order, if any, of the agency shall be treated as one decision. The right to judicial review as provided herein shall also be available to administrative agencies aggrieved by a final decision of the administrative hearing commission.

#### **621.189. Judicial review.--**

Final decisions of the administrative hearing commission in cases arising pursuant to the provisions of section 621.050 shall be subject to review pursuant to a petition for review to be filed in the court of appeals in the district in which the hearing, or any part thereof, is held or, where constitutionally required or ordered by transfer, to the supreme court, and by delivery of copies of the petition to each party of record, within thirty days after the mailing or delivery of the final decision and notice thereof in such a case. Review under this section shall be exclusive, and decisions of the administrative hearing commission reviewable pursuant to this section shall not be reviewable in any other proceeding, and no other official or court shall have power to review any such decision by an action in the nature of mandamus or otherwise except pursuant to the provisions of this section. The party seeking review shall be responsible for the filing of the transcript and record of all proceedings before the administrative hearing commission in the case with the appropriate court of appeals.

(L. 1978 S.B. 661, A.L. 2001 H.B. 693)

\*Transferred 1984; formerly 161.337

#### **621.193. Decision of commission to be upheld, when.--**

In cases reviewable under the provisions of section 621.189, the decision of the administrative hearing commission shall be upheld when authorized by law and supported by competent and substantial evidence upon the whole record, if a mandatory procedural safeguard is not violated and if the approval or disapproval of the exercise of authority in question by the administrative hearing commission does not create a result or results clearly contrary to that which the court concludes were the reasonable expectations of the general assembly at the time such authority was delegated to the agency.

(L. 1978 S.B. 661)

\*Transferred 1984; formerly 161.338

#### **621.198. Commission to make rules of procedure—contents—where filed.--**

The administrative hearing commission shall publish and file with the secretary of state rules of procedure for the conduct of proceedings before it. Rules of procedure adopted pursuant to this section shall be designed to simplify the maintenance of actions and to enable review to be sought, where appropriate, without the need to be represented by independent counsel. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

(L. 1965 p. 277 § 10, A.L. 1978 S.B. 661, A.L. 2001 H.B. 693)

\*Transferred 1984; formerly 161.342

## Missouri Public Service Commission

The Missouri Public Service Commission is charged with the statutory responsibility of ensuring that public utility owners receive safe and adequate services at just and reasonable rates that will provide the utility companies' shareholders the opportunity to earn a reasonable return on their investment.

The commission consists of five commissioners who are appointed by the governor to six-year terms with the advice and consent of the Senate. The governor designates one member as chair who serves in that capacity at the pleasure of the governor.

The commission is served by a staff of professional accountants, engineers, economists, attorneys, financial analysts and management specialists.

The general public is formally represented before the commission by the Office of the Public Counsel which is a separate state agency under the Department of Economic Development.

Under both the tariff method and the complaint case method, the commission will conduct hearings for the purpose of addressing the reasonableness of the proposed tariff or the reasonableness of the rates being challenged.

The commission staff conducts an independent, on-site investigation of the company's books and records to provide the commission with a recommendation as to what increase or decrease, if any, should be ordered. This investigation can take from two weeks to several months and results in the pre-filing of written testimony. Other parties such as the Office of the Public Counsel, consumer groups, commercial and industrial interests and municipalities are given an opportunity to pre-file written testimony.

Once the participants in the case have filed their testimony, the parties meet to determine which issues will be contested at the hearing. Prior to holding formal evidentiary hearings, the commission may hold public hearings which allow customers to express their views on the proposed increase or the utility's service.

At the formal evidentiary hearing, parties may cross-examine other parties' witnesses in a courtroom-like setting. Once the hearing is completed, the commission reviews the evidence submitted, deliberates and then issues a decision. That decision is subject to appeal to the courts by any party except the PSC staff.

### **386.050 Appointment of commissioners--qualifications--tenure.--**

~~The commission shall consist of five members who shall be appointed by the governor, with the advice and consent of the senate, and one of whom shall be designated by the governor to be chairman of said commission. Each commissioner, at the time of his appointment and qualification, shall be a resident of the state of Missouri, and shall have resided in said state for a period of at least five years next preceding his appointment and qualification, and he shall also be a qualified voter therein and not less than twenty-five years of age. Upon the expiration of each of the terms of office of the first commissioners, the term of office of each commissioner thereafter appointed shall be six years from the time of his appointment and qualification and until his successor shall qualify. Vacancies in said commission shall be filled by the governor for the unexpired term.~~

(RSMo 1939 § 5580, A. 1949 H.B. 2099)

Prior revisions: 1929 § 5124; 1919 § 10413

### **386.060 Removal of commissioners.--**

~~The governor may remove any commissioner for inefficiency, neglect of duty, or misconduct in office, giving to him a copy of the charges against him and an opportunity of being publicly heard in person or by counsel, in his own defense, upon not less than ten days' notice. If such commissioner shall be removed, the governor shall file in the office of the secretary of state a complete statement of all charges made against such commissioner, and his findings thereon, together with a complete record of the proceedings. The legislature also shall have the power, by a two-thirds vote of all members elected to each house, after ten days' notice in writing of the charges and a public~~

hearing, to remove any one or more of said commissioners from office for dereliction of duty, or corruption, or incompetency.

(RSMo 1939 § 5581)

Prior revisions: 1929 § 5125; 1919 § 10414

#### **386.110 Oath of office--eligibility of commissioners and officers.--**

Each commissioner and each person appointed to office or employment by the governor or by the commission shall, before entering upon the duties of the commissioner's office or employment, take and subscribe to an oath or affirmation to support the Constitution of the United States and of this state, and to faithfully and honestly discharge the duties of such office. No person shall be eligible to appointment or shall hold the office of commissioner, or be appointed by the commission, or hold any office or position under the commission, who holds any official relation to any gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, heat and refrigerating corporation, sewer corporation, or other public service or public utility corporation or person subject to any of the provisions of this chapter, or who owns stocks or bonds therein, or who has any pecuniary interest therein.

(RSMo 1939 § 5586, A.L. 1967 p. 578, A.L. 1996 S.B. 780)

Prior revisions: 1929 § 5130; 1919 § 10419

#### **386.130 Organization of commission--quorum--powers of a commissioner.--**

The commission shall promptly and duly organize. A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty or for the exercise of any power of the commission, and may hold meetings of the commission at any time or place within the state. Any investigation, inquiry or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner. All investigations, inquiries, hearings and decisions of a commissioner shall be and be deemed to be the investigations, inquiries, hearings and decisions of the commission, and every order and decision made by a commissioner, when approved and confirmed by the commission and ordered filed in its office, shall be and be deemed to be the order of the commission.

(RSMo 1939 § 5588)

Prior revisions: 1929 § 5132; 1919 § 10421

(1977) Public service commission must meet and act as a body. A report and order cannot be adopted by notational voting. State ex rel. Philipp Transit Lines, Inc. Public Service Commission (Mo.), 552 S.W.2d 696.

#### **386.230 Act as arbitrators.--**

Whenever any public utility has a controversy with another public utility or person and all the parties to such controversy agree in writing to submit such controversy to the commission as arbitrators, the commission shall act as such arbitrators, and after due notice to all parties interested shall proceed to hear such controversy, and their award shall be final. Parties may appear in person or by attorney before such arbitrators.

(RSMo 1939 § 5697)

Prior revisions: 1929 § 5241; 1919 § 10529

#### **386.240 Powers of commission, how exercised.--**

The commission may authorize any person employed by it to do or perform any act, matter or thing which the commission is authorized by this chapter to do or perform; provided, that no order, rule or regulation of any person employed by the commission shall be binding on any public utility or any person unless expressly authorized or approved by the commission.

(RSMo 1939 § 5698)

Prior revisions: 1929 § 524

**386.410 Commission to adopt rules of procedure, technical rules of evidence not to apply--proceedings to be informal.--**

1. All hearings before the commission or a commissioner shall be governed by rules to be adopted and prescribed by the commission. And in all investigations, inquiries or hearings the commission or commissioner shall not be bound by the technical rules of evidence.

2. No formality in any proceeding nor in the manner of taking testimony before the commission or any commissioner shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission.

(RSMo 1939 § 5600, A.L. 1947 V. I p. 463, A.L. 1977 H.B. 42 & 157, A.L. 1996 S.B. 780)  
Prior revisions: 1929 § 5144; 1919 § 10433

**386.420 Persons entitled to be heard--commission to make report, when --depositions authorized--may enforce attendance at hearings--record of proceedings to be kept.--**

1. At the time fixed for any hearing before the commission or a commissioner, or the time to which the same may have been continued, the complainant, the public counsel and the corporation, person or public utility complained of, and such corporations and persons as the commission may allow to intervene, shall be entitled to be heard and to introduce evidence. The commission shall issue process to enforce the attendance of all necessary witnesses.

2. Whenever an investigation shall be made by the commission, it shall be its duty, to make a report in writing in respect thereto, which shall state the conclusions of the commission, together with its decision, order or requirement in the premises. The commission or any commissioner or any party may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the circuit courts of this state and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers, memoranda and accounts. Witnesses whose depositions are taken as provided in this section and the officer taking the same shall severally be entitled to the same fees as are paid for like services in the circuit courts of this state.

3. If an order cannot, in the judgment of the commission, be complied with within thirty days, the commission may grant and prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order.

4. A full and complete record shall be made of all proceedings before the commission or any commissioner on any formal hearing had, and all testimony shall be taken down by a reporter appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. Preparation of a printed transcript may be waived by unanimous consent of all the parties. In case of an action to review any order or decision of the commission, a transcript of such testimony, together with all exhibits or copies thereof introduced and all information secured by the commission on its own initiative and considered by it in rendering its order or decision, and of the pleadings, record and proceedings in the cause, shall constitute the record of the commission; provided, that on review of an order or decision of the commission, the petitioner and the commission may stipulate that a certain question or questions alone and a specified portion only of the evidence shall be certified to the circuit court for its judgment, whereupon such stipulation and the question or questions and the evidence therein specified shall constitute the record on review.

(RSMo 1939 § 5688, A.L. 1977 H.B. 42 & 157, A.L. 1978 H.B. 1634, A.L. 1990 H.B. 1315)  
Prior revisions: 1929 § 5232; 1919 § 10520

Effective 7-10-90

**CROSS REFERENCE**

Administrative procedure and review, Chap. 536, RSMo

(1960) Commission did not abuse its discretion in denying application of water user and protestant against allowance of water rate increase to be made a party to the proceedings since he had no interest in the case different from that of the general public. *Smith v. Public Service Commission of Missouri (Mo.)*, 336 S.W.2d 491.

**386.440 Subpoenas, how issued--witness fees, how paid--subpoena service costs, how paid--certified copies of public records to be furnished to commission.--**

1. All subpoenas shall be signed and issued by a commissioner or by the secretary of the commission, and shall extend to all parts of the state, and may be served by any person authorized to serve process of courts of record or

by any person of full age designated for that purpose by the commission or by a commissioner. The person executing any such process shall receive the fees now prescribed by law for similar services in civil cases in the circuit courts in this state, and shall be paid in the same manner as provided herein for the payment of the fees of the witnesses. Each witness who shall appear before the commission or a commissioner by its or his order, shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in the circuit courts of this state, which shall be audited and paid by the state in the same manner as other expenses of the commission are audited and paid, upon the presentation of proper vouchers sworn to by such witnesses and approved by the commission.

2. Whenever a subpoena is issued at the instance of a complainant, respondent, or other party, except the public counsel to any proceeding before the commission, the cost of service thereof and the fee of the witness shall be borne by the party at whose instance the witness is summoned. Any witness subpoenaed except one whose fees and mileage may be paid from the funds of the commission may, at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service, and they are not at that time paid or tendered, he shall not be required to attend before the commission or commissioner, as directed in the subpoena. No witness furnished with free transportation shall receive mileage for the distance he may have traveled on such free transportation.

3. It shall be the duty of every public officer, without exacting or receiving charge or fee of any kind, to furnish to the commission, or the public counsel, upon application, a certified copy of any document or part thereof, on file in his office, and no public officer shall be entitled to receive from the commission or the public counsel any fee for entering, filing, docketing or recording any document required or authorized by law to be filed in his office.

4. Each witness who appears under subpoena before the commission or a commissioner at the instance of the public counsel shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in the circuit courts of this state, which shall be audited and paid by the state in the same manner as other expenses of the public counsel are audited and paid, upon the presentation of proper vouchers sworn to by such witnesses and approved by the public counsel.

(RSMo 1939 § 5598, A.L. 1977 H.B. 42 & 157)

Prior revisions: 1929 § 5142; 1919 § 10431

### **386.500 Rehearing before commission.--**

1. After an order or decision has been made by the commission, the public counsel or any corporation or person or public utility interested therein shall have the right to apply for a rehearing in respect to any matter determined therein, and the commission shall grant and hold such rehearing, if in its judgment sufficient reason therefor be made to appear; if a rehearing shall be granted the same shall be determined by the commission within thirty days after the same shall be finally submitted.

2. No cause or action arising out of any order or decision of the commission shall accrue in any court to any corporation or the public counsel or person or public utility unless that party shall have made, before the effective date of such order or decision, application to the commission for a rehearing. Such application shall set forth specifically the ground or grounds on which the applicant considers said order or decision to be unlawful, unjust or unreasonable. The applicant shall not in any court urge or rely on any ground not so set forth in its application for rehearing.

3. An application for a rehearing shall not excuse any corporation or person or public utility from complying with or obeying any order or decision or any requirement of an order or decision of the commission, or operate in any manner to stay or postpone the enforcement thereof except as the commission may by order direct.

4. If, after a rehearing and a consideration of the facts, including those arising since the making of the order or decision, the commission shall be of the opinion that the original order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change or modify the same. An order made after any such rehearing, abrogating, changing or modifying the original order or decision shall have the same force and effect as an original order or decision but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision.

(RSMo 1939 § 5689, A.L. 1977 H.B. 42 & 157)

Prior revisions: 1929 § 5233; 1919 § 10521

### 386.510 Review by circuit court.--

Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the rendition of the decision on rehearing, the applicant may apply to the circuit court of the county where the hearing was held or in which the commission has its principal office for a writ of certiorari or review (herein referred to as a writ of review) for the purpose of having the reasonableness or lawfulness of the original order or decision or the order or decision on rehearing inquired into or determined. The writ shall be made returnable not later than thirty days after the date of the issuance thereof, and shall direct the commission to certify its record in the case to the court. On the return day the cause shall be heard by the circuit court, unless for a good cause shown the same be continued. No new or additional evidence may be introduced upon the hearing in the circuit court but the cause shall be heard by the court without the intervention of a jury on the evidence and exhibits introduced before the commission and certified to by it. The commission and each party to the action or proceeding before the commission shall have the right to appear in the review proceedings. Upon the hearing the circuit court shall enter judgment either affirming or setting aside the order of the commission under review. In case the order is reversed by reason of the commission failing to receive testimony properly proffered, the court shall remand the cause to the commission, with instructions to receive the testimony so proffered and rejected, and enter a new order based upon the evidence theretofore taken, and such as it is directed to receive. The court may, in its discretion, remand any cause which is reversed by it to the commission for further action. No court in this state, except the circuit courts to the extent herein specified and the supreme court or the court of appeals on appeal, shall have jurisdiction to review, reverse, correct or annul any order or decision of the commission or to suspend or delay the executing or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties. The circuit courts of this state shall always be deemed open for the trial of suits brought to review the orders and decisions of the commission as provided in the public service commission law and the same shall be tried and determined as suits in equity.

(RSMo 1939 § 5690, A.L. 1961 p. 413, A.L. 1973 S.B. 263)

Prior revisions: 1929 § 5234; 1919 § 10522

(1960) On second appeal from orders of commission refusing authority to discontinue operation of two local passenger trains where facts were substantially the same as on prior appeal, the prior opinion that order was unreasonable and arbitrary was the law of the case. *State ex rel. C.R.I. & P. Ry. Co. v. Public Service Commission (Mo.)*, 335 S.W.2d 182.

(1962) Order of commission requiring telephone company to construct at a cost of more than \$300,000, two exchanges to furnish nontoll dial service to serve area outside its certificated franchise area was unreasonable as unsupported by substantial evidence with respect to company's ability to finance the project. *State ex rel. Bolivar Telephone Co. v. Public Service Commission (Mo.)*, 357 S.W.2d 96.

(1963) County residents who had sufficient interest to institute one proceeding before public service commission to require one telephone company to provide service in area and to intervene in consolidated proceedings by two other contesting telephone companies seeking authority to serve the disputed area, had right to judicial review of commission's final orders in the consolidated proceedings. *State ex rel. Summers v. Public Service Commission (A.)*, 366 S.W.2d 738.

(1973) Held no jurisdiction in circuit court to enjoin utility from collecting rate set by commission when court was not "of the county where the hearing was held or in which the commission has its principal office." *State ex rel. Spanish Lake Service, Inc. v. Luten (A.)*, 500 S.W.2d 46.

(1974) Held that order prohibiting all gas and electric companies from soliciting business by making cash payments and other inducement was an "original order or decision" and this section provides exclusive method of review. *Union Electric Co. v. Clark (Mo.)*, 511 S.W.2d 822.

(2000) Circuit court lacks jurisdiction to review interlocutory orders of Public Service Commission denying motions to dismiss. *State ex rel. Riverside Pipeline Co., L.P. v. Public Service Commission of State of Missouri*, 26 S.W.3d 396 (Mo.App.W.D.).

### State Tax Commission

The commission is composed of three members who are chosen from the two major political parties. The members are appointed by the governor with the advice and consent of the Senate.

The commission exercises general supervision over all the assessing officers in Missouri, over county boards of equalization and appeal and over all other laws concerning the general property tax. It institutes proceedings to enforce the penalties and liabilities provided by law for public officers, officers of corporations and individuals

failing to comply with the provisions of laws relating to the general property tax. Among other duties, the tax commission hears appeals of owners of real and tangible personal property from local boards of equalization.

#### **138.190 Creation of state tax commission--term of office.--**

There is hereby created within the state department of revenue a commission to be known and designated as the "State Tax Commission". The director of revenue shall have no supervision, authority or control over such actions or decisions of the state tax commission as relates to its duties prescribed by law. The state tax commission shall be composed of three members, chosen from the two major political parties, who shall be appointed by the governor, with the advice and consent of the senate, one of whom shall be designated chairman, and to hold office for staggered terms of six years; provided, however, that of members first appointed, one member shall be appointed for a term of two years, one member for a term of four years, and one member for a term of six years. Each commissioner shall hold office until his successor shall qualify.

(RSMo 1939 §§ 11009, 11013, 11017, A.L. 1945 p. 1805 § 2)

Prior revisions: 1929 §§ 9819, 9823, 9828; 1919 §§ 12828, 12832, 12837

(1958) Order of the state tax commission equalizing tax assessments as between counties did not affect individual rights and is not subject to review under Sec. 536.100. May Department Stores v. State Tax Comm. (Mo.), 308 S.W.2d 748.

#### **138.200 Qualifications of members--interim appointments--members to devote full time to duties--private employment prohibited.--**

1. Each commissioner shall be a qualified voter and taxpayer and resident of the state for at least five years next preceding his appointment. At all times the state tax commission shall be so constituted that not more than two members shall be of the same political party.

2. In the event of a vacancy occurring while the general assembly is not in session, the governor may appoint a temporary member of the commission to serve until such time as a permanent appointment can be made with the advice and consent of the senate.

3. Each commissioner shall devote his full time and efforts to the discharge of his duties and shall not accept any private employment of any kind or nature while serving on the commission nor hold any other office under the laws of this state, or any city, or county, or city and county, in this state, nor any office under the government of the United States.

4. No commissioner or employee of the commission shall hold any position of profit, engage in any occupation or business interfering with, or inconsistent with, his duties as commissioner or employee. No person is eligible to appointment or shall hold the office of commissioner, or be appointed by the commission, or hold any office or position under the commission, who holds any official office or position or who is a stockholder or who is in any wise pecuniarily interested in any common carrier, public utility, or any other corporation whose original assessment is made by the commission, as provided by this chapter. The words "original assessment" as used herein shall not be held or construed to include the assessment of corporation franchise tax.

(RSMo 1939 §§ 11013, 11017, A.L. 1945 p. 1805 § 2, L. 1955 p. 833 § 3, A.L. 1959 H.B. 107)

Prior revisions: 1929 §§ 9823, 9828; 1919 §§ 12832, 12837

#### **138.210 Oath of office.--**

Before entering upon the duties of his office, each commissioner shall take and subscribe to the following oath: State of Missouri,)

) -ss County of .....

I, ....., do solemnly swear that I will support the Constitution of the United States and the Constitution of the state of Missouri; that I will faithfully and impartially discharge my duties as a member of the state tax commission; and that I will according to my best knowledge and judgment cause to be enforced all the laws of this state pertaining to the duties of the state tax commission, so help me God.

..... Subscribed and sworn to this .... day of .... 20.. .

(RSMo 1939 § 11014, A.L. 1945 p. 1805 § 4)

Prior revisions: 1929 § 9825; 1919 § 12834

### **138.230 Compensation and expenses.--**

~~Each commissioner shall annually receive thirty-eight thousand five hundred dollars plus any salary adjustment provided pursuant to section 105.005, RSMo, as compensation for his services, and reasonable traveling and other expenses actually paid and necessary to the performance of the duties of his office.~~

(RSMo 1939 § 11020, A.L. 1945 p. 1805 § 3, L. 1951 p. 838 § 138.415, L. 1955 p. 833 § 2, A.L. 1959 H.B. 107, A.L. 1977 H.B. 77 merged with H.B. 841, A.L. 1984 S.B. 528)

Prior revisions: 1929 § 9831; 1919 § 12840

Revisor's note: Salary adjustment index is printed, as required by § 105.005, in Appendix E.

### **138.240 Quorums--hearings--decisions.--**

1. The commissioners appointed under sections 138.190 to 138.490 shall, within ten days after their appointment, meet at their offices in Jefferson City and enter upon the duties of their office.

2. A majority of such commission shall, at all times, constitute a quorum to transact business, and any vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the commission so long as a majority remains.

3. Any investigation, inquiry or hearing which this commission is authorized to hold or undertake may be held or undertaken by or before any one member of the commission.

4. ~~All investigations, inquiries, hearings and decisions of a commissioner, and every order made by a commissioner, when approved and confirmed by a quorum of the commission, if so shown on its record of proceedings, shall be deemed to be the order of the commission.~~

(RSMo 1939 § 11016, A.L. 1945 p. 1805 § 12)

Prior revisions: 1929 § 9827; 1919 § 12836

(1961) Where one member of the tax commission conducted a hearing on an appeal from the county board of equalization and the transcript of the evidence therein was not available for eleven days after the decision was rendered the commission could not possibly have complied with the provisions of section 536.080 and consequently its decision was invalid. T.J. Moss Tie Co. v. State Tax Comm. of Missouri (Mo.), 345 S.W.2d 191.

### **138.360 Issuance of subpoenas--fees--costs.--**

~~The commission may subpoena witnesses. All subpoenas shall be signed and issued by a commissioner or by the secretary of the commission, and shall extend to all parts of the state, and may be served by any person authorized to serve process of courts of record or by any person of full age designated for that purpose by the commission or by a commissioner.~~

2. The person executing any such process shall receive the fees now prescribed by law for similar services in civil cases in the circuit courts in this state, and shall be paid in the same manner as provided herein for the payment of the fees of the witnesses.

3. ~~Each witness who shall appear before the commission or a commissioner by its or his order, shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in the circuit courts of this state, which shall be audited and paid by the state in the same manner as other expenses of the commission are audited and paid, upon the presentation of proper vouchers sworn to by such witnesses and approved by the commission.~~

4. Whenever a subpoena is issued at the instance of a complainant, respondent, or other party to any proceeding before the commission, the cost of service thereof and the fee of the witness shall be borne by the party at whose instance the witness is summoned.

5. Any witness subpoenaed except one whose fees and mileage may be paid from the funds of the commission, may, at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service, and they are not at that time paid or tendered, he shall not be required to attend before the commission or commissioner, as directed in the subpoena. No witness furnished with free transportation shall receive mileage for the distance he may have traveled on such free transportation.

(RSMo 1939 § 11026, A.L. 1945 p. 1805 § 14, A. 1949 S.B. 1023)

Prior revisions: 1929 § 9853; 1919 § 12846

### **138.370 Examination of witnesses and books.--**

1. ~~The commission shall have power to examine witnesses under oath. Any member of the commission is hereby empowered to administer oaths.~~
2. ~~The commission, or any member, or authorized representative thereof, shall have the right to examine books, papers or accounts of any corporation, firm or individual owning property liable for assessment for taxation, general or specific, under the laws of this state.~~

(RSMo 1939 § 11026, A.L. 1945 p. 1805 § 14, A. 1949 S.B. 1023)

Prior revisions: 1929 § 9853; 1919 § 12846

### **138.431 Hearing officers of tax commission to hear appeals, when, procedure --appeal of hearing officer's decision, how.--**

1. To hear and decide appeals pursuant to section 138.430, ~~the commission shall appoint one or more hearing officers. The hearing officers shall be subject to supervision by the commission.~~ No person shall participate on behalf of the commission in any case in which such person is an interested party.
2. The commission may assign such appeals as it deems fit to a hearing officer for disposition. The commission may, in its discretion, reserve such appeals as it deems fit to be heard and decided by the full commission, a quorum thereof, or any commissioner, subject to the provisions of section 138.240, and, in such case, the decision shall be final, subject to judicial review in the manner provided in subsection 4 of section 138.470.
3. ~~The manner in which appeals shall be presented and the conduct of hearings shall be made in accordance with rules prescribed by the commission for determining the rights of the parties; provided that, the commission, with the consent of all the parties, may refer an appeal to mediation. The commission shall promulgate regulations for mediation pursuant to this section.~~ No regulation or portion of a regulation promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo. There shall be no presumption that the assessor's valuation is correct. A full and complete record shall be kept of all proceedings. All testimony at any hearing shall be recorded but need not be transcribed unless the matter is further appealed.
4. ~~Unless an appeal is voluntarily dismissed, a hearing officer, after affording the parties reasonable opportunity for fair hearing, shall issue a decision and order affirming, modifying, or reversing the determination of the board of equalization, and correcting any assessment which is unlawful, unfair, improper, arbitrary, or capricious. The commission may, prior to the decision being rendered, transfer to another hearing officer the proceedings on an appeal determination before a hearing officer. The complainant, respondent-assessor, or other party shall be duly notified of a hearing officer's decision and order, together with findings of fact and conclusions of law. Appeals from decisions of hearing officers shall be made pursuant to section 138.432.~~
5. All decisions issued pursuant to this section or section 138.432 by the commission or any of its duly assigned hearing officers shall be issued no later than sixty days after the hearing on the matter to be decided is held or the date on which the last party involved in such matter files his or her brief, whichever event later occurs.

(L. 1983 S.B. 63, et al., A.L. 1986 S.B. 520, A.L. 1992 S.B. 630, A.L. 1999 S.B. 219)

### **138.432 Decisions and orders of hearing officers, appeal of, procedure--when deemed final.--**

~~A complainant, respondent-assessor, or other party subject to a decision and order of a hearing officer, may file with the commission, within thirty days following the date of notification or mailing of such decision and order, an application to have such decision and order reviewed by the commission. Such application shall contain specific detailed grounds upon which it is claimed the decision is erroneous. The commission may summarily allow or deny an application for review. If an application is allowed, the commission may affirm, modify, reverse, or set aside the decision and order of the hearing officer on the basis of the evidence previously submitted in such case, may take additional evidence, or may remand the matter to the hearing officer with directions. Any additional hearing shall be conducted in accordance with the requirements of subsection 3 of section 138.431. The commission shall promptly notify the parties of its decision and order, together with its findings of fact and conclusions of law. The decision of the commission shall be subject to judicial review in the manner provided by subsection 4 of section 138.470. If an application for review is denied, the decision and order of the hearing officer shall be deemed to be the final decision of the commission for the purpose of judicial review and shall be subject to the judicial review within the time and in the manner provided for with respect to decisions of the commission~~

pursuant to subsection 4 of section 138.470; except that, the time limitations shall run from the date of notice or mailing of the order of the commission denying the application for review.

(L. 1983 S.B. 63, et al.)

### **Division of Motor Carrier and Railroad Safety -- Administrative Law Judges**

In 1985, the Division of Transportation was established within the Department of Economic Development. The division was organized for the purpose of assuming all regulatory and supervisory duties and functions relating to transportation activities within the state that were previously performed by the Public Service Commission. In 1996, the Division of Motor Carrier and Railroad Safety was designated as the primary state agency having safety oversight responsibility for light rail transit systems.

The Administrative Law Judge Section consists of two administrative law judges and their secretary. The administrative law judges hear and decide cases involving truck, bus, and rail activities. Those duties are performed by each administrative law judge without the concurrence of the other one. In addition, the administrative law judges, acting together promulgate all practice and procedure rules that affect proceedings before the division.

#### **622.015 Transfer of all powers and duties of the public service commission regulating transportation activities to division--railroad expense fund established, purpose--definitions applicable, substitutions for commission and commissioner.--**

The division shall be organized so as to assume all regulatory and supervisory powers, duties and functions heretofore performed by the public service commission relating to transportation activities within the state. All the powers, duties and functions of the public service commission relating to such activities are hereby transferred to this division by type II transfer as set forth in the reorganization act of 1974. Assessments made for the expenses of railroad regulation, as required by law, shall be paid into the "Railroad Expense Fund", a special fund which is hereby established in the state treasury. The fund shall be applicable to appropriation of the general assembly and shall be devoted solely to the payment of expenditures incurred by the division and attributable to the regulation of railroads. Any amount remaining in the special fund at the end of any fiscal year shall not revert to the general revenue fund. All powers, duties and functions of the public service commission relating to common carriers generally, chapter 387, RSMo, railroad corporations, chapters 388 and 389, RSMo, motor carriers and express companies, chapter 390, RSMo, street railroads, chapter 391, RSMo, and other statutes relevant to transportation activities are transferred to the motor carrier and railroad safety division of the department of economic development and that division is the successor to the public service commission for the purposes of those chapters. Except as otherwise provided herein, the provisions of chapter 386, RSMo, that relate to the powers and duties of the public service commission and the procedure before the public service commission and the courts are hereby made applicable to the motor carrier and railroad safety division. Definitions contained in those chapters shall continue and shall be applied by the motor carrier and railroad safety division as they have been applied prior to July 1, 1985, until changed by law. Wherever the word "commission" is used, the word "division" shall be substituted therefor. Wherever the word "commissioner" is used, the words "administrative law judge" shall be substituted therefor.

(L. 1985 S.B. 2 § 1 subsec. 2)

Effective 7-1-85

#### **CROSS REFERENCE**

Powers and duties of the public service commission now transferred to the division of motor carrier and railroad safety. RSMo 386.320

#### **622.020 Administrative law judges, appointment, terms, qualifications, private law practice prohibited--compensation, expenses.--**

Three administrative law judges shall also be appointed for the division. They shall be nominated by the department director and appointed by the governor with the advice and consent of the senate. Each shall be appointed for a term of six years, except of those first appointed, one shall be appointed for a term of four years,

and one for a term of two years. Each shall be an attorney-at-law admitted to practice before the supreme court of Missouri, and while serving in this capacity as an administrative law judge shall not otherwise practice law during his term of office. Not more than two of the administrative law judges shall be members of the same political party.

2. Administrative law judges shall be compensated at the same rate as administrative hearing commissioners are compensated, and they shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(L. 1985 S.B. 2 § 2)

Effective 7-1-85

#### **622.027 Rules, procedure.--**

The division director with the approval of the department director shall make all rules necessary to perform the duties and responsibilities assigned to the division. The administrative law judges, acting together, shall make all necessary rules required to establish procedures of practice before them. All rules by the division director or the administrative law judges shall be made in accordance with the provisions of this section and chapter 536, RSMo. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

(L. 1985 S.B. 2 § 3, A.L. 1993 S.B. 52, A.L. 1995 S.B. 3)

#### **622.030 Administrative law judges, powers and duties--hearing procedure --technical evidence not required--docket fee paid to whom, deposited in highway fund.--**

1. The administrative law judges shall assume all the duties concerning transportation activities heretofore imposed upon the commissioners of the public service commission in their quasi-judicial capacity and function. All ministerial duties shall be performed by the division, and the administrative law judges shall not be responsible for those activities. The administrative law judges shall hear and decide all matters concerning transportation activities which the public service commission or public service commissioners would have been required to hear and decide in a quasi-judicial capacity.

2. Each administrative law judge may exercise all powers granted to the division without the concurrence of any other administrative law judge, except with respect to the rulemaking powers, in which all administrative law judges must concur. The method of assignment of petitions, appeals or other cases may be determined by rule or other agreement between the administrative law judges. Except as provided in section 622.035, all hearings before the administrative law judges shall be governed by rules adopted by them. In all investigations, inquiries or hearings before the division or the administrative law judges, neither the administrative law judges nor the division shall be bound by technical rules of evidence. No formality in any proceeding nor in the manner of taking testimony before the division or an administrative law judge shall invalidate any order, decision, rule or regulation made, approved or confirmed by the division or administrative law judge.

3. The division may charge a reasonable docket fee as may be set by rule to be paid upon the filing of any petition, application, complaint, or other request for relief or authority by any party other than the division staff. All such docket fees shall be paid to the state director of revenue at the time of the filing of any such petition, application, complaint or other request for relief or authority, and the same shall be deposited by the state director of revenue in the highway fund of the state of Missouri.

(L. 1985 S.B. 2 § 4)

Effective 7-1-85

#### **622.035 Record of formal hearings to be taken by reporter, exception--review procedure based on certified record, contents.--**

Except by agreement of all parties, a full and complete record shall be made of all proceedings before an administrative law judge on any formal hearing had, and all testimony shall be taken down by a reporter appointed by the division, and the parties shall be entitled to be heard in person or by attorney. Upon the granting of an application for a writ of review or certiorari to review any order or decision of the division or an administrative law judge, the reviewing court shall direct the applicant to certify a copy of the transcript of such testimony, together with all exhibits or copies thereof introduced and all information secured by the division or an administrative law judge on its own initiative and considered by it in rendering its order or decision, and of the pleadings, record and

proceedings in the cause, which shall constitute the record, provided, that on review of an order or decision, the parties to the action may stipulate that a certain question or questions alone and a specified portion only of the evidence shall be certified to the circuit court for its judgment, whereupon such stipulation and the question or questions and the evidence therein specified shall constitute the record on review.

(L. 1985 S.B. 2 § 5)  
Effective 7-1-85

**622.120 Administrative law judges and employees, oath, eligibility for office.--**

Each administrative law judge and each person appointed to office or employment by the governor or by the division shall, before entering upon the duties of such person's office or employment, take and subscribe to an oath or affirmation to support the Constitution of the United States and of this state, and to faithfully and honestly discharge the duties of such office. No person shall be eligible to appointment or shall hold the office of administrative law judge, or be appointed by the division, or hold any office or position under the division, who holds any official relation to any common carrier, railroad corporation, street railroad corporation, transportation of freight or property company, carrier, corporation or person subject to any of the provisions of this chapter or chapter 387, 388, 389, 390 or 391, RSMo, or who owns stocks or bonds therein, or who has any pecuniary interest therein.

(L. 1996 S.B. 780)

**622.140 Division of motor carrier and railroad safety conferences, cooperative agreements and joint investigations and hearings with other agencies, division's receipt and disbursement of grants.--**

1. The division may confer in person, or by correspondence, by attending conventions, or in any other way, with the members of any railroad, transportation, public utility, public service commission, or similar division of other states and the United States of America, or any official, agency or instrumentality thereof, on any matter relating to the performance of its duties.

2. The division may enter into and establish fair and equitable cooperative agreements or contracts with or act as an agent or licensee for the United States of America, or any official, agency or instrumentality thereof, or any railroad, transportation, public utility, public service commission, or similar division of other states, that are proper, expedient, fair and equitable and in the interest of the state of Missouri and the citizens thereof, for the purpose of carrying out its duties under this chapter with reference to railroads or street railroads, as limited and supplemented by section 622.110 and to that end the division may receive and disburse any contributions, grants or other financial assistance as a result of or pursuant to such agreements or contracts. Any contributions, grants or other financial assistance so received shall be deposited in the railroad expense fund established in section 622.015 and appropriated for the purposes for which they are received.

3. The division may make joint investigations, hold joint hearings within or without the state, and issue joint or concurrent orders in conjunction or concurrence with any railroad, transportation, public utility, public service commission, or similar division, of other states or the United States of America, or any official, agency or any instrumentality thereof, except that in the holding of such investigations or hearings, or in the making of such orders, the division shall function under agreements or contracts between states or under the concurrent power of states to regulate interstate commerce, or as an agent of the United States of America, or any official, agency or instrumentality thereof, or otherwise.

**622.150 Authority for division of motor carrier and railroad safety to enter into reciprocal agreements.--**

The division may engage in any conferences with officials of any and all other states and the District of Columbia, territories and possessions of the United States and foreign countries for the purpose of promoting, entering into, and establishing fair and equitable reciprocal agreements or arrangements that in the judgment of the division are proper, expedient, fair, and equitable and in the interest of the state of Missouri and the citizens thereof to the end that any motor carrier of passengers or property which operates motor vehicles and trailers into, out of, or through this state as a for-hire motor carrier and which has paid all regulatory fees required by the state, District of Columbia, territory or possession of the United States or foreign country where the motor vehicles and trailers are duly licensed or registered pursuant to an agreement or arrangement entered into by the Missouri highway reciprocity commission, or if no such agreement or arrangement has been entered into, where the owner is a

resident, shall not be required to pay fees prescribed in section 390.136, RSMo; but the provisions of this section shall be operative as to a motor vehicle and trailer duly licensed or registered in a state, District of Columbia, territory or possession of the United States or foreign country pursuant to an agreement or arrangement entered into by the Missouri highway reciprocity commission and if no such agreement or arrangement has been entered into, where the owner is a resident, upon which all regulatory fees have been paid, when operated for hire in Missouri only to the extent that, under the laws of the state, District of Columbia, territory or possession of the United States or foreign country, wherein such motor vehicle and trailer are registered like exemptions are granted motor vehicles and trailers duly licensed or registered in Missouri which may be conducting similar motor carrier operations for hire in such other state, District of Columbia, territory or possession of the United States, or foreign country.

(L. 1996 S.B. 780)

#### **622.160 Arbitration by division.--**

Whenever any carrier has a controversy with another carrier or person and all the parties to such controversy agree in writing to submit such controversy to the ~~division as arbitrator, the division shall act as such arbitrator, and after due notice to all parties interested shall proceed to hear such controversy, and their award shall be final.~~ Parties may appear in person or by attorney before such arbitrator

(L. 1996 S.B. 780)

#### **622.170 Delegation of authority.--**

~~The division may authorize any person employed by it to do or perform any act, matter or thing which the division is authorized by this chapter to do or perform, except that no order, rule or regulation of any person employed by the division shall be binding on any carrier or any person unless expressly authorized or approved by the division.~~

(L. 1996 S.B. 780)

#### **622.340 Intervention by a party, when, subpoena of witnesses--report of division's investigation depositions--extension of time for compliance with order--record of proceedings.--**

1. At the time fixed for any hearing before the division or an administrative law judge, or the time to which the same may have been continued, the complainant and the carrier, corporation or person which is the subject of the complaint, and such carriers, corporations and persons as the division may allow to intervene, shall be entitled to be heard and to introduce evidence. ~~The division shall issue process to enforce the attendance of all necessary witnesses.~~

2. Whenever an investigation shall be made by the division, it shall be its duty, to make a report in writing in respect thereto, which shall state the conclusions of the division, together with its decision, order or requirement in the premises. ~~The division or any administrative law judge or any party may, in any investigation or hearing before the division, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the circuit courts of this state and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers, memoranda and accounts. Witnesses whose depositions are taken as provided in this section and the officer taking the same shall severally be entitled to the same fees as are paid for like services in the circuit courts of this state.~~

3. If an order cannot, in the judgment of the division, be complied with within thirty days, the division may grant and prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order.

~~4. A full and complete record shall be made of all proceedings before the division or any administrative law judge on any formal hearing had, and all testimony shall be taken down by a reporter appointed by the division, and the parties shall be entitled to be heard in person or by attorney. Preparation of a printed transcript may be waived by unanimous consent of all the parties.~~

(L. 1996 S.B. 780)

**622.360 Subpoenas, issuance, process, fees, costs--documents furnished to division, fee.--**

1. All subpoenas shall be signed and issued by an administrative law judge or by the director of the division, and shall extend to all parts of the state, and may be served by any person authorized to serve process of courts of record or by any person of full age designated for that purpose by the division or by an administrative law judge. The person executing any such process shall receive the fees now prescribed by law for similar services in civil cases in the circuit courts in this state, and shall be paid in the same manner as provided herein for the payment of the fees of the witnesses. Each witness who shall appear before the division or an administrative law judge by order of the division or an administrative law judge shall receive for attendance the fees and mileage now provided for witnesses in civil cases in the circuit courts of this state, which shall be audited and paid by the state in the same manner as other expenses of the division are audited and paid, upon the presentation of proper vouchers sworn to by such witnesses and approved by the division.

2. Whenever a subpoena is issued at the instance of a complainant, respondent, or other party to any proceeding before the division, the cost of service thereof and the fee of the witness shall be borne by the party at whose instance the witness is summoned. Any witness subpoenaed except one whose fees and mileage may be paid from the funds of the division may, at the time of service, demand the fee to which the witness is entitled for travel to and from the place at which the witness is required to appear, and one day's attendance. If such witness demands such fees at the time of service, and they are not at that time paid or tendered, the witness shall not be required to attend before the division or an administrative law judge, as directed in the subpoena. No witness furnished with free transportation shall receive mileage for the distance such witness may have traveled on such free transportation.

3. It shall be the duty of every public officer, without exacting or receiving charge or fee of any kind, to furnish to the division, upon application, a certified copy of any document or part thereof, on file in the office of such officer, and no public officer shall be entitled to receive from the division or the public counsel any fee for entering, filing, docketing or recording any document required or authorized by law to be filed with the office of such officer.

(L. 1996 S.B. 780)

**622.420 Application for rehearing, when granted--application, contents --compliance with order--modification of order, when.--**

1. After an order or decision has been made by the division, any carrier, corporation or person interested therein may apply for a rehearing in respect to any matter determined therein, and the division shall grant and hold such rehearing, if in its judgment sufficient reason therefor be made to appear. If a rehearing shall be granted the same shall be determined by the division within thirty days after the same shall be finally submitted.

2. No cause or action arising out of any order or decision of the division shall accrue in any court to any carrier, corporation or person unless that party shall have made, before the effective date of such order or decision, application to the division for a rehearing. Such application shall set forth specifically the ground or grounds on which the applicant considers said order or decision to be unlawful, unjust or unreasonable. The applicant shall not in any court urge or rely on any ground not so set forth in its application for rehearing.

3. An application for a rehearing shall not excuse any carrier, corporation or person from complying with or obeying any order or decision or any requirement of an order or decision of the division, or operate in any manner to stay or postpone the enforcement thereof except as the division may by order direct.

4. If, after a rehearing and a consideration of the facts, including those arising since the making of the order or decision, the division shall be of the opinion that the original order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the division may abrogate, change or modify the same. An order made after any such rehearing, abrogating, changing or modifying the original order or decision shall have the same force and effect as an original order or decision but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision.

(L. 1996 S.B. 780)

**622.430 Review by circuit court of order, procedure.--**

Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the rendition of the decision on rehearing, the applicant may apply to the circuit court of the county where the hearing was held or in which the division has its principal office for a writ of certiorari or review for the purpose of having the reasonableness or lawfulness of the original order or decision or the order or decision on

~~rehearing inquired into or determined.~~ The writ shall be made returnable not later than thirty days after the date of the issuance thereof, and shall direct the applicant to certify the division's record in the case to the court in conformity with any applicable court rules. On the return day the cause shall be heard by the circuit court, unless for a good cause shown the same be continued. No new or additional evidence may be introduced upon the hearing in the circuit court but the cause shall be heard by the court without the intervention of a jury on the evidence and exhibits introduced before the division and certified to by it. The division and each party to the action or proceeding before the division shall have the right to appear in the review proceedings. Upon the hearing the circuit court shall enter judgment either affirming or setting aside the order of the division under review. In case the order is reversed by reason of the division failing to receive testimony properly proffered, the court shall remand the cause to the division, with instructions to receive the testimony so proffered and rejected, and enter a new order based upon the evidence already taken, and such as it is directed to receive. The court may, in its discretion, remand any cause which is reversed by it to the division for further action. No court in this state, except the circuit courts to the extent herein specified and the supreme court or the court of appeals on appeal, shall have jurisdiction to review, reverse, correct or annul any order or decision of the division or to suspend or delay the executing or operation thereof, or to enjoin, restrain or interfere with the division in the performance of its official duties. The circuit courts of this state shall always be deemed open for the trial of suits brought to review the orders and decisions of the division as provided by law and the same shall be tried and determined as suits in equity.

(L. 1996 S.B. 780)

### **Personnel Advisory Board**

The Personnel Advisory Board has oversight responsibility for the Missouri Merit System and the Uniform Classification and Pay System and has broad policy making authority in various areas of human resources administration. The board conducts hearings for appeals of dismissals and other disciplinary actions. Responsibilities also include meeting with appointing authorities regarding personnel management needs and making recommendations to the Governor and the General Assembly regarding state compensation policy.

#### **36.050 Advisory board, members, appointment, terms, removal, compensation.--**

1. The personnel advisory board and its functions, duties and powers prescribed in this chapter is transferred by type III transfer to the office of administration.

~~2. The personnel advisory board shall consist of seven members.~~ Four members of the board shall be public members, citizens of the state who are not state employees or officials, of good character and reputation, who are known to be in sympathy with the application of merit principles to public employment. Two members shall be employees of state agencies covered by section 36.030 or section 36.031, one a member of executive management, and one a nonmanagement employee. Members who are employees shall not participate in disciplinary appeal decisions from their agencies. The state equal employment opportunity officer shall be a member of the board. No member of the board, during the member's term of office, or for at least one year prior thereto, shall be a member of any local, state or national committee of a political party or an officer or member of a committee in any partisan political club or organization, or hold, or be a candidate for, a partisan public office. An employee member who leaves state employment or otherwise fails to further qualify for the appointment shall vacate the position.

~~3. The members of the board shall be appointed by the governor by and with the advice and consent of the senate.~~ The three current members of the board serving terms which expire July 31, 1998, July 31, 2000, and July 31, 2002, shall continue to serve for the terms for which they were previously appointed. One new public member shall be appointed for a term ending July 31, 1998, one employee member shall be appointed for a term ending July 31, 2000, and one employee member shall be appointed for a term ending July 31, 2002. Thereafter, appointments of all members shall be for terms of six years. Any vacancy shall be filled by an appointment for the unexpired term. Each member of the board shall hold office until such member's successor is appointed and qualified.

~~4. A member of the board is removable by the governor only for just cause, after being given a written notice setting forth in substantial detail the charges against the member and an opportunity to be heard publicly on the charges before the governor. A copy of the charges and a transcript of the record of the hearing shall be filed with the secretary of state.~~

~~5. Each public member of the board shall be paid an amount for each day devoted to the work of the board which shall be determined by the commissioner of administration and filed with the reorganization plan of the~~

office of administration; provided, however, that such amount shall not exceed that paid to members of boards and commissions with comparable responsibilities. All board members are entitled to reimbursement for necessary travel and other expenses pertaining to the duties of the board. Duties performed for the board by any employee member of the board shall be considered duties in connection with the appointment of the individual, and such employee member shall suffer no loss of regular compensation by reason of performance of such duties.

6. The board shall elect from among its membership a chairman and vice chairman, who shall act as chairman in the chairman's absence. It shall meet at the times and places specified by call of the chairman, the governor, or the director. At least one meeting shall be held every three months. All regular meetings are open to the public. Notice of each meeting shall be given in writing to each member by the director. Two members shall constitute a quorum until January 1, 1997, thereafter, four members shall constitute a quorum for the transaction of official business.

7. To assist in the performance of its duties the board may employ staff from funds appropriated for this purpose; provided, however, that this provision shall not be interpreted to limit the ability of the personnel director to provide assistance to the board.

(L. 1945 p. 1157 § 5, A. 1949 S.B. 1018, A.L. 1959 H.B. 111, A.L. 1971 S.B. 327, A.L. 1973 1st Ex. Sess. H.B. 8, A.L. 1979 H.B. 673, A.L. 1996 H.B. 1146)

### **36.060 Duties of board--rules generally, promulgation, procedure.--**

1. In addition to the duties imposed upon it elsewhere in this chapter, it shall be the duty of the board:

~~(1) To conduct hearings and render decisions on appeals as provided in this act;~~

~~(2) To make any investigation which it may consider desirable concerning the administration of personnel subject to this law;~~

(3) To hold regular meetings with appointing authorities to propose methods of resolving general personnel problems;

(4) To make annual reports, and such special reports as it considers desirable, to the governor and the general assembly regarding personnel administration in the state service and recommendations there. These special reports shall evaluate the effectiveness of the personnel division and the appointing authority in their operations under this law;

(5) To make such suggestions and recommendations to the governor and the director relating to the state's employment policies as will promote morale, efficiency and uniformity in compensation of the various employees in the state service;

~~(6) To promulgate rules and regulations~~ to ensure that no applicant or employee is discriminated against on the basis of race, creed, color, religion, national origin, sex, ancestry or handicap.

2. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

(L. 1945 p. 1157 § 6, A.L. 1971 S.B. 327, A.L. 1979 H.B. 673, A.L. 1993 S.B. 52, A.L. 1995 S.B. 3)

### **36.070 Rules and regulations, authorized, procedure.--**

~~1. The board shall have power to prescribe such rules and regulations not inconsistent with the provisions of this chapter as it deems suitable and necessary to carry out the provisions of this chapter. Such rules and regulations shall be effective when filed with the secretary of state as provided by law.~~

2. The board shall prescribe by rule the procedures for employment and promotion in accordance with the provisions of this chapter.

3. The board shall determine by rule the procedures for and causes of disciplinary actions including termination, demotion and suspension of employees subject to this chapter which regulations shall be consistent with the provisions of this law.

(L. 1945 p. 1157 § 9, A.L. 1979 H.B. 673, A.L. 1995 S.B. 3)

(1981) In a workers' compensation hearing, the Labor and Industrial Relations Commission and its referees are limited to ascertaining the facts from the record presented by the parties and applying the workers' compensation law to the facts, and may not take official notice of facts not judicially cognizable. *Stegeman v. St. Francis Xavier Parish (Mo.)*, 611 S.W.2d 204.

**36.390 Right of appeal, procedure, regulation--nonmerit agencies may adopt --dismissal appeal procedure--nonmerit agencies, not adopting, to establish similar system, exceptions.--**

1. An applicant whose request for admission to any examination has been rejected by the director may appeal to the board in writing within fifteen days of the mailing of the notice of rejection by the director, and in any event before the holding of the examination. The board's decision on all matters of fact shall be final.

2. Applicants may be admitted to an examination pending a consideration of the appeal, but such admission shall not constitute the assurance of a passing grade in education and experience.

3. Any applicant who has taken an examination and who feels that he or she has not been dealt with fairly in any phase of the examination process may request that the director review his or her case. Such request for review of any examination shall be filed in writing with the director within thirty days after the date on which notification of the results of the examination was mailed to the applicant. A candidate may appeal the decision of the director in writing to the board. This appeal shall be filed with the board within thirty days after date on which notification of the decision of the director was mailed to the applicant. The board's decision with respect to any changes shall be final, and shall be entered in the minutes. A correction in the rating shall not affect a certification or appointment which may have already been made from the register.

4. An eligible whose name has been removed from a register for any of the reasons specified in section 36.180 or in section 36.240 may appeal to the board for reconsideration. Such appeal shall be filed in writing at the office of the director within thirty days after the date on which notification was mailed to the board. The board, after investigation, shall make its decision which shall be recorded in the minutes and the eligible shall be notified accordingly by the director.

5. Any regular employee who is dismissed or involuntarily demoted for cause or suspended for more than five working days may appeal in writing to the board within thirty days after the effective date thereof, setting forth in substance the employee's reasons for claiming that the dismissal, suspension or demotion was for political, religious, or racial reasons, or not for the good of the service. Upon such appeal, both the appealing employee and the appointing authority whose action is reviewed shall have the right to be heard and to present evidence at a hearing which, at the request of the appealing employee, shall be public. At the hearing of such appeals, ~~technical rules of evidence shall not apply.~~ After the hearing and consideration of the evidence for and against a suspension or demotion, the board shall approve or disapprove such action and in the event of a disapproval the board shall order the reinstatement of the employee to the employee's former position and the payment to the employee of such salary as the employee has lost by reason of such suspension or demotion. After the hearing and consideration of the evidence for and against a dismissal, the board shall approve or disapprove such action and may make any one of the following appropriate orders:

(1) Order the reinstatement of the employee to the employee's former position and the payment to the employee of part or all of such salary as has been lost by reason of such dismissal;

(2) Sustain the dismissal of such employee, unless the board finds that the dismissal was based upon political, social, or religious reason, in which case it shall order the reinstatement of the employee to the employee's former position and the payment to the employee of such salary as has been lost by reason of such dismissal;

(3) Except as provided in\* subdivisions (1) and (2) of this subsection, the board may sustain the dismissal, but may order the director to recognize reemployment rights for the dismissed employee pursuant to section 36.240, in an appropriate class or classes, or may take steps to effect the transfer of such employee to an appropriate position in the same or another division of service.

6. The board shall establish such rules as may be necessary to give effect to the provisions of this section. The rules may provide that the board or the chairman of the board may delegate responsibility for the conduct of investigations and the hearing of appeals provided pursuant to any section of this chapter to a member of the board or to a hearing officer designated by the board. Such hearing officer shall have the power to administer oaths, subpoena witnesses, compel the production of records pertinent to any hearing, and take any action in connection with such hearing which the board itself is authorized to take by law other than making the final decision and appropriate order. When the hearing has been completed, the individual board member or the hearing officer who conducted the hearing shall prepare a summary thereof and recommend a findings of fact, conclusions of law, decision and appropriate order for approval of the board. The board may adopt such recommendations in whole or in part, require the production of additional testimony, reassign the case for rehearing, or may itself conduct such new or additional hearing as is deemed necessary prior to rendering a final decision. The board may also establish rules which provide for alternative means of resolving one or more of the types of appeals outlined in this section.

7. The provisions for appeals provided in subsection 5 of this section for dismissals of regular merit employees may be adopted by nonmerit agencies of the state for any or all employees of such agencies.

8. Agencies not adopting the provisions for appeals provided in subsection 5 of this section\*\* shall adopt dismissal procedures substantially similar to those provided for merit employees. However, these procedures need not apply to employees in policy-making positions, or to members of military or law enforcement agencies.

9. The hearing shall be deemed to be a contested case and the procedures applicable to the processing of such hearings and determinations shall be those established by chapter 536, RSMo. ~~Decisions of the personnel advisory board shall be final and binding subject to appeal by either party. Final decisions of the personnel advisory board pursuant to this subsection shall be subject to review on the record by\*\*\* the circuit court pursuant to chapter 536, RSMo.~~

(L. 1945 p. 1157 § 38, A.L. 1973 1st Ex. Sess. H.B. 8, A.L. 1977 S.B. 98, A.L. 1979 H.B. 673, A.L. 1996 H.B. 1146)

\*Word "in" does not appear in original rolls.

\*\*Words "of this section" do not appear in original rolls.

\*\*\*Word "by" does not appear in original rolls.

(1986) This section requires the board to calculate back pay to date of wrongful discharge, but allows board to adjust such backpay by rule of "avoidable consequences" and by an amount for costs and reasonable attorneys' fees. *DeSilva v. Director of Div. of Aging*, 714 S.W.2d 690 (Mo.App.).

(1988) Attorney general was authorized to terminate an assistant attorney general at any time and was not required to adopt a postdischarge hearing procedure. Where more than one statute deals with the same subject, the statutes should be harmonized when reasonable but to the extent of any discord between them, the definite prevails. (Mo.App.) *Wood v. Webster*, 772 S.W.2d 1.

(1995) Secretary of state is an administrative officer of the state and is authorized by law to make rules and to adjudicate contested cases. Where agency is not defined for purposes of this chapter, court looked to definitions in chapter 536, RSMo, the administrative procedures act, and found the secretary of state's office is a state agency and is required to establish procedures for dismissals of nonmerit employees in compliance with procedures for dismissal of merit employees or to adopt similar appeal procedures. *Laws v. Secretary of State*, 895 S.W.2d 43 (Mo. App. W.D.).

(1996) Secretary of State's office is an agency within the meaning of this section. *Pace v. Moriarty*, 83 F.3d 261 (8th Cir.).

#### **36.400 Powers of board to administer oaths and issue subpoenas.—**

~~The board, each member of the board, and the director shall have power to administer oaths, subpoena witnesses, and compel the production of books and papers pertinent to any investigation or hearing authorized by this law. Any person who shall fail to appear in response to a subpoena or to answer any question or produce any books or papers pertinent to any such investigation or hearing, or who shall knowingly give false testimony therein, shall be guilty of a misdemeanor.~~

(L. 1945 p. 1157 § 39)

#### **Board of Probation & Parole**

The board is comprised of seven full-time members appointed by the governor with the advice and consent of the Senate. During their six-year terms, members determine the release of individuals from confinement in the Division of Adult Institutions through parole or conditional release. Parole hearings are held at each correctional center monthly. If a release date is set the board determines whether placement in release strategies such as electronic monitoring, residential facilities and community release centers is appropriate. The board stipulates special conditions in order to address specific offender needs and improve the opportunity for success under supervision. They also monitor the supervision of offenders in the community and return those offenders to prison who are a risk to the community. The board also investigates and reports to the governor on all applications for pardons, commutations of sentence, reprieves or restorations of citizenship.

**217.030 Directors of divisions and chairman of board of probation and parole, appointment--appointment of general personnel.--**

The director shall appoint the directors of the divisions of the department, ~~except the chairman of the board of probation and parole who shall be appointed by the governor and who shall serve as the director of the division of probation and parole.~~ Division directors shall serve at the pleasure of the director, except the chairman of the board of probation and parole who shall serve in the capacity of chairman at the pleasure of the governor. The director of the department shall be the appointing authority under chapter 36, RSMo, to employ such administrative, technical and other personnel who may be assigned to the department generally rather than to any of the department divisions or facilities and whose employment is necessary for the performance of the powers and duties of the department.

(L. 1982 H.B. 1196 § 5)

**\*217.665. Board members, appointment, qualifications--terms, vacancies --compensation, expenses-- chairman, designation.--**

1. Beginning August 28, 1996, ~~the board of probation and parole shall consist of seven members appointed by the governor by and with the advice and consent of the senate.~~
2. Beginning August 28, 1996, members of the board shall be persons of recognized integrity and honor, known to possess education and ability in decision making through career experience and other qualifications for the successful performance of their official duties. Not more than four members of the board shall be of the same political party.
3. At the expiration of the term of each member and of each succeeding member, ~~the governor shall appoint a successor who shall hold office for a term of six years and until his successor has been appointed and qualified.~~ Members may be appointed to succeed themselves.
4. Vacancies occurring in the office of any member shall be filled by appointment by the governor for the unexpired term.
5. ~~The governor shall designate one member of the board as chairman.~~ The chairman shall be the director of the division and shall have charge of the division's operations, funds and expenditures. The chairman shall designate by order of record another member to act as chairman in the event of absence or sickness of the chairman, and during such time the member so appointed by the chairman shall possess all powers of the chairman.
6. ~~Members of the board shall devote full time to the duties of their office and before taking office shall subscribe to an oath or affirmation to support the Constitution of the United States and the Constitution of the State of Missouri. The oath shall be signed in the office of the secretary of state.~~
7. The annual compensation for each member of the board whose term commenced before August 28, 1999, shall be forty-five thousand dollars plus any salary adjustment, including prior salary adjustments, provided pursuant to section 105.005, RSMo. Salaries for board members whose terms commence after August 27, 1999, shall be set as provided in section 105.950, RSMo; provided, however, that the compensation of a board member shall not be increased during the member's term of office, except as provided in section 105.005, RSMo. In addition to compensation provided by law, the members shall be entitled to reimbursement for necessary travel and other expenses incurred pursuant to section 33.090, RSMo.

(L. 1982 H.B. 1196 § 118, A.L. 1984 S.B. 528, S.B. 611, A.L. 1985 H.B. 273, A.L. 1989 H.B. 408, A.L. 1995 H.B. 424, A.L. 1999 H.B. 368)

\*Salary adjustment index is printed, as required by § 105.005, in Appendix E.

**217.670 Decisions to be by majority vote--hearing panel, membership, duties --jurisdiction removal or appeal to board, when--decision to be final --closed meetings authorized.--**

1. The board shall adopt an official seal of which the courts shall take official notice.
2. ~~Decisions of the board regarding granting of paroles, extensions of a conditional release date or revocations of a parole or conditional release shall be by a majority vote of the hearing panel members. The hearing panel shall consist of one member of the board and two hearing officers appointed by the board. A member of the board may remove the case from the jurisdiction of the hearing panel and refer it to the full board for a decision. Within thirty days of entry of the decision of the hearing panel to deny parole or to revoke a parole or conditional release, the offender may appeal the decision of the hearing panel to the board. The board shall consider the appeal within~~

thirty days of receipt of the appeal. ~~the decision of the board shall be by majority vote of the board members and shall be final.~~

3. The orders of the board shall not be reviewable except as to compliance with the terms of sections 217.650 to 217.810 or any rules promulgated pursuant to such section.

4. The board shall keep a record of its acts and shall notify each correctional center of its decisions relating to persons who are or have been confined in such correctional center.

5. Notwithstanding any other provision of law, any meeting, record, or vote, of proceedings involving probation, parole, or pardon, may be a closed meeting, closed record, or closed vote.

(L. 1982 H.B. 1196 § 119, A.L. 1984 S.B. 611, A.L. 1989 H.B. 408, A.L. 1995 H.B. 424)

**217.690 Board may order release or parole, when--personal hearing--standards --rules--minimum term for eligibility for parole, how calculated --first degree murder, eligibility for hearing--hearing procedure --notice--education requirements, exceptions.--**

1. When in its opinion there is reasonable probability that an offender of a correctional center can be released without detriment to the community or to himself, the board may in its discretion release or parole such person except as otherwise prohibited by law. All paroles shall issue upon order of the board, duly adopted.

2. Before ordering the parole of any offender, the board shall have the offender appear before a hearing panel and shall conduct a personal interview with him, unless waived by the offender. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered a reduction of sentence or a pardon. An offender shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every offender while on parole shall remain in the legal custody of the department but shall be subject to the orders of the board.

3. ~~The board shall adopt rules not inconsistent with law, in accordance with section 217.040, with respect to the eligibility of offenders for parole, the conduct of parole hearings or conditions to be imposed upon paroled offenders. Whenever an order for parole is issued it shall recite the conditions of such parole.~~

4. When considering parole for an offender with consecutive sentences, the minimum term for eligibility for parole shall be calculated by adding the minimum terms for parole eligibility for each of the consecutive sentences, except the minimum term for parole eligibility shall not exceed the minimum term for parole eligibility for an ordinary life sentence.

5. Any offender under a sentence for first degree murder who has been denied release on parole after a parole hearing shall not be eligible for another parole hearing until at least three years from the month of the parole denial; however, this subsection shall not prevent a release pursuant to subsection 4 of section 558.011, RSMo.

6. Parole hearings shall, at a minimum, contain the following procedures:

(1) The victim or person representing the victim who attends a hearing may be accompanied by one other person;

(2) The victim or person representing the victim who attends a hearing shall have the option of giving testimony in the presence of the inmate or to the hearing panel without the inmate being present;

(3) The victim or person representing the victim may call or write the parole board rather than attend the hearing;

(4) The victim or person representing the victim may have a personal meeting with a board member at the board's central office; and

(5) The judge, prosecuting attorney or circuit attorney and a representative of the local law enforcement agency investigating the crime shall be allowed to attend the hearing or provide information to the hearing panel in regard to the parole consideration.

7. The board shall notify any person of the results of a parole eligibility hearing if the person indicates to the board a desire to be notified.

8. The board may, at its discretion, require any offender seeking parole to meet certain conditions during the term of that parole so long as said conditions are not illegal or impossible for the offender to perform. These conditions may include an amount of restitution to the state for the cost of that offender's incarceration.

9. Nothing contained in this section shall be construed to require the release of an offender on parole nor to reduce the sentence of an offender heretofore committed.

10. Beginning January 1, 2001, the board shall not order a parole unless the offender has obtained a high school diploma or its equivalent, or unless the board is satisfied that the offender, while committed to the custody of the

department, has made an honest good-faith effort to obtain a high school diploma or its equivalent; provided that the director may waive this requirement by certifying in writing to the board that the offender has actively participated in mandatory education programs or is academically unable to obtain a high school diploma or its equivalent.

(L. 1982 H.B. 1196 § 123, A.L. 1986 S.B. 450, A.L. 1987 S.B. 261, A.L. 1989 H.B. 128, et al., H.B. 408, A.L. 1992 S.B. 638, A.L. 1995 H.B. 424)

SEP 24 2001

**Executive Order  
01-15**  
**SECRETARY OF STATE  
COMMISSIONS DIVISION**

WHEREAS, it is in the best interest of the State of Missouri, as an employer, to recruit and retain a quality workforce to ensure that state services are delivered to Missouri's citizens and visitors in an effective, professional and courteous manner; and

WHEREAS, the State of Missouri has adopted a benefits policy statement which advocates a total compensation program that:

- (a) Provides the highest quality service to citizens of the State while also providing financial security to employees in an equitable and cost-effective manner;
- (b) Maintains a statewide comprehensive salary and benefits package, including retirement, health care and other benefits, that is externally competitive with the marketplace and that is internally equitable;
- (c) Eliminates ineffective duplication of benefit plans; and

WHEREAS, the State of Missouri recognizes the importance of ensuring that a comprehensive approach is utilized in assessing the appropriateness of salary and benefit levels for state employees;

THEREFORE, I, BOB HOLDEN, GOVERNOR OF THE STATE OF MISSOURI, do hereby establish the Missouri Commission on Total Compensation whose primary task will be to analyze, determine and recommend courses of action relating to total compensation that are consistent with the objectives set forth in this Executive Order. The Commission on Total Compensation shall be comprised of the following members:

- One member from the Personnel Advisory Board or an appointed designee;
- Three department directors from the Executive Branch of state government appointed by the Governor, including the Office of Administration;
- The Executive Director of the Missouri Consolidated Health Care Plan;
- The Executive Director of the Highway and Transportation Employees' and Highway Patrol Retirement System;
- The Executive Director of the Missouri State Employees' Retirement Plan;
- One member of the Senate from the majority party and one member of the Senate from the minority party appointed by the President Pro Tem of the Senate;
- One member of the House of Representatives from the majority party and one member of the House of Representatives from the minority party appointed by the Speaker of the House;
- One state retiree appointed by the Governor;
- Two non-management state employees appointed by the Governor.

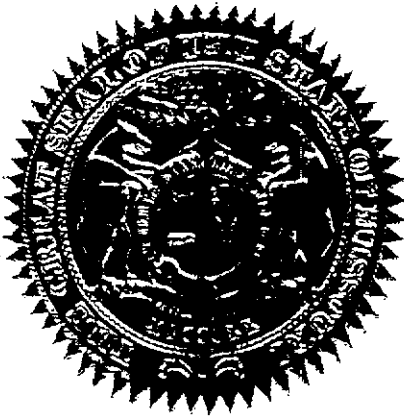
The Missouri Commission on Total Compensation shall:

- (a) Before each October 1<sup>st</sup>, commencing with 2002, issue recommendations to the Governor on budget allocation for personnel service resources, including but not limited to the areas of pay plan, retirement, and health care, that appropriately balance the total compensation package for state employees;
- (b) Evaluate legislative and policy proposals relating to pay and benefit issues that may be introduced and recommend appropriate courses of action to the Governor;
- (c) Evaluate the criteria for membership in the Administrative Law Judges' and Legal Advisors Plan to determine whether or not sufficient evidence exists to expand,

limit, or contract membership in the system in the future and report these findings to the Governor by March 1, 2002.

- (d) Recommend new, more flexible approaches to pay and benefit issues that may assist the state in recruiting and retaining highly qualified and productive employees;
- (e) Develop and recommend training and educational materials for distribution to state employees that illustrate the value of the State's total compensation benefits package;
- (f) Issue a report annually to the Governor and General Assembly regarding the progress the Missouri Commission on Total Compensation has achieved in meeting the objectives set forth in this Executive Order;
- (g) Coordinate efforts with other governmental agencies, boards and commissions, and the General Assembly on the issues that overlap their respective areas of responsibility;
- (h) Designate an appropriate work staff of state employees with pay and benefits expertise to conduct research, surveys, demonstrations, and prepare materials that the Missouri Commission on Total Compensation deems advisable and necessary for the discharge of its duties.

The Missouri Commission on Total Compensation shall commence activity upon the signing of this executive order and shall continue until rescinded.



IN WITNESS WHEREOF, I  
have hereunto set my hand and  
caused to be affixed the Great  
Seal of the State of Missouri, in  
the City of Jefferson, on this  
21<sup>st</sup> day of September, 2001.

  
GOVERNOR

ATTEST:

  
SECRETARY OF STATE

**MISSOURI COMMISSION ON TOTAL COMPENSATION  
2001/2002**

**Commission Members**

*Revised 02/02*

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